Supreme Court, U. S.
FILED
MAR 2 1977
MICHAEL RODAK, JR., CLERK

JOINT APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

GEORGE HENSON MIREE, *et al.*,
Petitioners,
v.
DEKALB COUNTY, GEORGIA, *et al.*,
Respondents.
No. 76-607

JUDITH ANITA PHILLIPS,
Petitioner,
v.
DEKALB COUNTY, GEORGIA, *et al.*,
Respondents.
No. 76-659

FIREMAN'S FUND INSURANCE COMPANY,
Petitioner,
v.
DEKALB COUNTY, GEORGIA, *et al.*,
Respondents.
No. 76-700

WILLIAM MICHAEL FIELDS,
Petitioner,
v.
DEKALB COUNTY, GEORGIA, *et al.*,
Respondents.
No. 76-722

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONS FOR WRITS OF CERTIORARI FILED OCTOBER 30 AND NOVEMBER 10, 19 AND 23, 1976
CERTIORARI GRANTED JANUARY 17, 1977

JOINT TABLE OF CONTENTS

Joint Appendix Page No.

PART A

Appendix in *Miree*, No. 76-607

Docket Entries 1

Complaint, Filed November 5, 1973 9

Answer of Defendant, DeKalb County, Georgia, Filed January 4, 1974 40

Motion of DeKalb County, Georgia to Dismiss, Filed January 4, 1974 49

Motion to Strike of Defendant, DeKalb County, Georgia, Filed January 4, 1974 51

Plaintiffs' First Amendment to Complaint, Filed January 22, 1974 53

Motion of DeKalb County, Georgia to Dismiss the Amended Complaint, Filed February 15, 1974 78

Motion of DeKalb County, Georgia to Strike Allegations from the Amended Complaint, Filed February 15, 1974 80

Answer of DeKalb County, Georgia to First Amended Complaint of Plaintiffs, Filed February 15, 1974 82

Plaintiffs' Second Amendment to Complaint, Filed April 24, 1974 86

Answer of DeKalb County, Georgia to Second Amended Complaint of Plaintiffs, Filed May 14, 1974 87

Joint Appendix Page No.

PART A—Continued

Motion to Dismiss and/or Motion to Strike Allegations from the Second Amended Complaint of Plaintiffs, Filed May 14, 1974 89

Motion of Southeast Machinery, Inc., Machinery Buyers Corp. and Fireman's Fund Insurance Company to Vacate, Set Aside, Alter and Amend the Orders entered on June 27, 1974, and for Reconsideration, Rehearing and New Trial, Filed July 3, 1974 91

PART B

Appendix in *Phillips*, No. 76-659

Docket Entries 99

Complaint 107

Answer of DeKalb County, Georgia 119

Motion to Dismiss 125

Amendment to Motion to Dismiss and Strike 127

Exhibit A—Affidavit of Cal M. Sandman with attachments 128

PART C

Appendix in *Fireman's Fund*, No. 76-700

Docket Entries 131

Complaint 136

Joint Appendix Page No.

PART C—Continued

Motion to Dismiss 175

Motion to Strike 179

Plaintiff's First Amendment of Complaint with Exhibits 182

Motion to Dismiss the Amended Complaint 243

Motion to Strike the Amended Complaint 244

PART D

Appendix in *Fields*, No. 76-722

Docket Entries 247

Complaint 253

Motion to Strike 293

Motion to Dismiss 296

Answer of DeKalb County, Georgia, and the Chairman and Members of the Board of Commissioners of Road and Revenues of DeKalb County 299

PART E

Reference to Orders and Judgments in all cases

Miree, No. 76-607 309

Phillips, No. 76-659 309

Fireman's Fund, No. 76-700 311

Fields, No. 76-722 312

PART A
APPENDIX
IN
NO. 76-607

GEORGE HENSON MIREE, *et al.*,
Petitioners,

v.

DEKALB COUNTY, GEORGIA, *et al.*,
Respondents.

CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:
1/4/74 deft. & 1/11/74 deftg.

TITLE OF CASE	ATTORNEYS
[illegible]	For plaintiff:
[illegible] and [illegible] by and through [illegible] and [illegible], Co-Guardians of said Minors	[illegible] Jr. [illegible], Jr. [illegible] [illegible] [illegible] ([illegible]) Gilbert E. Johnston Twelfth Floor [illegible] [illegible], Ala. 35203 (205-322-8516)
vs.	For defendant:
UNITED STATES OF AMERICA; [illegible]; SOUTHEAST AIRLINES, INC.; and DEKALB COUNTY, GEORGIA 4/25/74	William D. Wallace Asst. U. S. Atty. [illegible] Atlanta, [illegible] [illegible] Meade Burns & Edwin S. Stone Wendall K. Willard Harvey, Willard & Elliott 125 Trinity Place Decatur, Georgia(also for DeKalb Co.)

SeeSheet 1A for additional counsel.

STATISTICAL RECORD	COSTS		DATE	NAME OF RECEIPT NO.	REC	DISB
J.S. 5 mailed 11/5/73	Clerk	15 00	NOV 5 1973	[illegible]		
			NOV 9 1973	[illegible]	15 00	
J.S. 6 mailed	Marshal	40 56		Trans.U.S.Dep.		15 00
Cause of Action: Wrongful death - aircraft crash	Docket fee		OCT 9 1974	[illegible]	5 00	
	Witness fees		OCT 11 1974	Trans.U.S.Dep.		5 00
Action arose at:	Depositions					

BEST COPY AVAILABLE

DATE	PROCEEDINGS

ADDITIONAL COUNSEL FOR DEFENDANTS

J. Arthur Mozley
Smith, Cohen, Pingel, Kohler,
Martin & Lower
2400 First National Bank Tower
Atlanta, Georgia 30303 658-1200
(for defts., Machinery Buyers Corp. Now known as Semac Industries, Inc.) and Southeast Machinery, Inc.)

George M. Fleming
Torts Section, Civil Division
Department of Justice
902 Safeway Building
Washington, D.C. 20530
For: United States

Long, Weinberg, Ansley & Wheeler
Meade Burns & Edward D. Stone
3000 The Equitable Building
Atlanta, Georgia 30303 (525-5903)
and
Wendell K. Willard
Harvey, Willard & Elliott
125 Trinity Place
Decatur, Georgia (377-3851)
(For DeKalb County, Georgia)

JURY DEMAND

DATE	PROCEEDINGS
Nov. 5	Complaint with attachments, filed.
	Summons issued and delivered to U. S. Marshal.
	$250.00 bond for costs, filed.
	Plft's Request for admission addressed to deft. DeKalb Co., filed.
	Plft's request to produce and permit inspection and copying addressed to the deft. DeKalb, filed.
	Plfts' first interrogs. addressed to deft DeKalb, filed.
	Plfts' requests for admission addressed to deft. DeKalb Co., filed.
	Plfts' Request to produce and permit inspection and copying addressed to deft. DeKalb County, filed.
	Plfts' first interrogs. addressed to deft DeKalb County, filed.
	Requests for admission addressed to deft. Southeast Machinery, Inc., filed.
	Plfts' request to produce and permit inspection and copying addressed to deft. Southeast Machinery, Inc., filed.
	Plfts' first interrogs. addressed to deft. Southeast Machinery, Inc., filed.
	Plfts' request for admission addressed to deft. Machinery Buyers Corp., filed.
	Plfts' request to produce and permit inspection and copying addressed to deft. Machinery Buyers Corp., filed.
	Plfts' first interrogs. addressed to deft. Machinery Buyers Corp., filed. (all of above attached to complaint)
13	Consent order extending time thru 12-24-73 for deft. DeKalb Co. Ga. to answer, etc. the complaint, to respond to pltf's 1st interrogs. & request for admissions, filed. C. furn.
20	ORDER by the Court upon consent of parties ext. time for defts. Machinery Buyers Corp. and Southeast Machinery, Inc. shall have to and thru 12/24/73 to file ans., interrogs., etc., filed. (c. furn.)
Dec. 3	Case reassigned to Judge O'Kelley
17	Marshal's returns on service as to Dekalb Co., Ga.(Horis A. Ward), (W. M. Coolidge, Jr.)(Robert J. Morris)(Hoke Clayton Smith)(T. M. Callaway, Jr)(William A. Williams)(A.C.Guhl) all on 11-6-73; as to Southeast Machinery, Inc. & USA(U.S. Atty) both on 11-6-73; as to Machinery Byers Corp. on 12-13-73, filed.
19	Consent Order extending time thru 1-11-74 for defts. Machinery Buyers Corp. & Southeast Machinery, Inc. to file pleadings & response to Pltf's complaint, interrogs., requsts for admissions & requests for production of documents, filed. C. furn.
21	ORDER that deft. DeKalb County shall have thru 1/4/74 within which to file ans., ans. to interrogs., etc., filed.(c. counsel) ORDER that deft. USA shall have thru 2/15/74 to respond or object to plfts' requests for discovery, filed.(c. furn.)
1974	
Jan. 4	ANSWER of Deft. DeKalb County with JURY DEMAND, filed.
	Deft. DeKalb County's Motion to Dismiss, filed.
	Deft. DeKalb County's Motion to Strike, filed.
	Brief in Support of DeKalb County's Motions to Dismiss & Strike, filed.
	Deft. DeKalb County's Responses and Objections to Pltf's First Interrogs., and Motion for Protective Order, filed.
	Deft. DeKalb County's Responses and Objections to Pltf's Request for Admissions and Motion for Protective Order, filed.
	Brief In Support of DeKalb County's Objections to First Interrogs, filed.

et.al.

SHEET # 2

vs

UNITED STATES OF AMERICA et.al. JURY DEMAND

1974	PROCEEDINGS
Jan 4	Brief in Support of DeKalb County's Objections to Pltf's Request for Admissions, filed.
7	Consent Order ext. time thru 2-15-74 for deft United States to respond to the complaint, filed. (copy to counsel 1-9)
	Consent Order ext. time thru 1-31-74 for pltfs' to file responses and briefs to deft Dekalb County's motion to dismiss, deft Dekalb County's motion to strike, objections of deft Dekalb to pltfs' first interrogs., and objections of deft Dekalb to pltfs' requests for admission, filed. (copies furn)
11	ANSWER of defts. Machinery Buyers Corp. and Southeast Machinery, I... & DEMAND FOR JURY TRIAL, filed.
	Deft. Machinery Buyers Corp.'s answers to pltfs' requests for admis... filed.
	Deft. Machinery Buyers Corp.'s answers to pltfs' first interrogs., filed.
	Deft. Machinery Buyers Corp.'s response to pltfs' request to produ..., etc., filed.
	Deft. Southeast Machinery, Inc.'s answers to pltfs' requests for ndmission, filed.
	Deft. Southeast Machinery, Inc.'s answers to pltfs' 1st interrogs., filed.
	Deft. Southeast Machinery, Inc.'s response to pltfs' request to pro-duce, etc., filed.
17& 22	Pltf's motion to amend & add a party, brief in support & proposed Order, filed.(1st amendment to complaint attached.)
28	Deft. DeKalb County's Supplemental Brief, filed.
29	Brief of pltfs' in oppostion to motions of deft. Dekalb County to dismiss and to strike, filed.
	Motion to require deft. Dekalb County, Ga. to answer more fully certain of pltfs' first interrogs. and to answer certain of such interrogs. which were not answered with brief, filed.
	Motion of pltfs' to determine the sufficiency of deft. Dekalb County's objections to pltfs' requests for admission, for an order overruling said objections and requiring deft. to respond to said requests and for an award of expenses with brief, filed.
31	Order allowing Dekalb County up to and including Feb. 11 in which to file responses and briefs to Motion to amend and add party defts. and responsive pleadings to pltf's amended compliant, filed. Counsels
	Response of defts. Machinery Buyers Corp. and Southeast machinery, Inc. to pltf's motion to amend and add a party and pltfs' 1st. amendment to comp., filed.
31	SUBMITTED ON DEFT. DEKALB COUNTYS MOTION TO DISMISS, MOTION TO STRIKE; MOTION FOR PROTECTIVE ORDER
Feb. 11	Consent Order by Clerk extending timenthru 2-15-74 for deft. DeKalb Co. to respond to pltf's motion to amend & add party defts. & responsive pleadings to pltf's amended complaint, filed. C. furn. WCO
13	Pltfs' second interrogs. to deft Machinery Buyers Corp., filed. To WCO
15	Deft. U.S.A.'s ANSWER, Crossclaim and Counterclaim, filed.
	Deft. U.S.A.'s Answers to Pltfs' First Interrogs.,filed.
	Deft. U.S.A.'s Response to Pltfs' Request to Produce...,filed.
	Deft. U.S.A.'s Response to Pltfs' Request for Admission, filed.
	Deft. U.S.A.'s First Interrogs., to Aubrey S. Miree, Jr. and Claude H. Estes, Jr., filed. (all above to WCO)

DATE	PROCEEDINGS
Feb. 15	ANSWER of Dekalb County, Ga. to first amended corplaint of pltfs, filed.
	Brief in opposition to pltfs' motion to determine the sufficiency of Dekalb County's objections to pltf's requests for admission and motion to more fully answer certain of pltf's interrogs., filed.
21	Brief of Dekalb County, Georgia in opposition to pltf's motion to amend and add a party, filed.
21	Dekalb Countys Motion to dismiss the amended complaint, filed.
21	Dekalb Countys motion to strike allegations from the amended complaint, filed.
21	Dekalb Countys second supplemental brief with exhibits, filed.
20	Pltf's 2nd request to produce & permit inspection and copying addressed to the deft. United States of America, filed. To WCO
21	ANSWER of pltf's to counter-claim of deft. U. S. A., filed.
25	SUBMITTED ON PLTF'S MOTION TO AMEND AND ADD A PARTY; PLTFS. MOTION TO REQUIRE DEKALB COUNTY TO ANSWER MORE FULLY PLTFS. 1st. interrogs.AND TO ANSWER CERTAIN OF SUCH INTERROGS; MOTION OF PLTF. TO DETERMINE THE SUFFICIENCY OF DFTT. DEKALB COUNTYS OBJECTIONS TO PLTFS. REQUESTS FOR ADMISSION, FOR AN ORDER OVERRULING SAID OBJECTIONS AND REQUIRING DEFT. TO RESPOND TO SAID REQUESTS FOR AN AWARD OF EXPENSES.
22	ANSWER of Machinery Buyers Corp. and Southeast Machinery, Inc. to the cross-claim of Deft. United States of America, filed. WCO
25	Memorandum in opposition to Dekalb County's motion to dismiss as to the cross-claim of the U. S. filed, by U.S.. WCO
	Pltf's brief in opposition to motions of deft. USA to consolidate, filed.(motion filed in companion cases & refers to this case) To WCO
27	Pltf's brief in response to brief of Dekalb Co., Ga. in opposition to pltf's motion to amend and add party, filed. ToWCO
27	Amendment of "Response of Defts. Machinery Buyers Corp. and Southeast Machinery, Inc. to Pltfs' motion to amend and add a party and pltfs' first amendment to complaint, filed. WCO
	ANSWER of Dekalb County, Georgia to Cross-Claim of deft USA, filed.(with JURY DEMAND) To WCO
March 5	Notice of appearance of George M. Fleming, Torts Section, Civil Section, U. S. Department of Justice, Washington, D. C. as additional counsel for the U. S., filed. To WCO
12	SUBMITTED ON DEKALB COUNTY'S MOTION TO DISMISS THE AMENDED COMPLAINT & MOTION TO STRIKE ALLEGATIONS FROM THE AMENDED COMPLAINT
15	Consent Order extending time thru 4-1-74 for deft. Machinery Buyers Corp. to answer pltf's 2nd interrogs., filed. C. furn. To WCO
18	Answers of pltf's to first interrogs. propounded by deft. U.S.A. with exhibits, filed. WCO
25	Response to pltfs' 2nd. request to produce and permit inspection and copying addressed to the deft. United States of America, filed WCO
27	Deft. Machinery Buyers Corp. ANSWERS to pltf's second interrog's. filed. WCO
	Deft's Machinery Buyers Corpl & Southeast Machinery, Inc. response in opposition to motions to dismiss & strike filed by DeKalb County To WcO

Next sheet

1974	PROCEEDINGS
APRIL 2	Second interrog's propounded by the deft, USA, pursuant to rule of the federal rules of civil procedure, to pltfs Aubrey S. Miree, Jr., and Claude H. Estes, Jr., filed. To WCO
8	Deft. DeKalb County, Ga's 3rd supplemental brief, filed. To WCO
10	Further ANSWERS of pltfs to first interrogs propounded by defts, filed.
12	Deft. USA's First Request toProduce and permit Inspection and Copying Addressed to Pltfs., filed. WCO
23	Pltfs' Second Interrogs., to deft. U.S.A., filed. WCO
	Pltfs' Second Requests for Admission to deft. U.S.A., filed. WCO
24	Answers of pltfs. to second interrogs. of deft. U.S.A., filed.
	Pltfs' Motion To Amend, with Brief, Proposed Order & Pltfs' 2nd Amendment to Complaint, filed.
	Pltfs' Supplemental Brief in opposition to motions of deft to dismiss & to strike, filed.
30	Answer and Response of Defts Machinery Buyers and Southeast Machinery, to Pltf's Second Amendment to Complaint, filed. To WCO
May 2	Consent Order by Clerk extending time thru 5-20-74 for DeKalb Co. to file response to pltf's motion for 2nd amendment to complaint,filed. To WCO. copies furn.
14	Deft USA's ANSWER to pltfs' 2nd Amended Complaint, filed. WCO
	Deft DeKalb County, Georgia's Motion To Dismiss and/or motion to strike allegations from the 2nd amended complaint of pltf., with brief, filed. WCO
	ANSWER of DeKalb County, Georgia to 2nd amended complaint of pltfs., with JURY DEMAND, filed. WCO
15	Amendment of deft. Machinery Buyers Corp. and Southeast Machinery, Inc of previously-filed answers to pltf's requests for admissions and Pltfs' 1st. interrogs., filed. WCO
16	Deft Machinery Buyers Corp. and Southeast Machinery, Inc.'s Amendment to Answer, filed.(with ORDER allowing same) copy to counsel To WCO
29	SUBMITTED ON PLTFS' MOTION TO AMEND.
30	Consent Order extending time thru 6-12-74 for deft. USA to respond to pltf's interrogs. & request for admission, filed. c. furn. WCO
June 4	SUBMITTED ON DEFT. DEKALB COUNTY, GEORGIA'S MOTION TO DISMISS AND/OR STRIKE ALLEGATIONS FROM THE 2ND AMENDED COMPLAINT.
11	Consent ORDER by WCO ext. time thru 6/26/74 for deft. U.S.A. to answer, respond, etc.. to pltfs' Interrogs., and Request for Admissions, filed. (copies to counsel 6/12) To WCO
20	Deft DeKalb County's supplemental brief in support of motions to dismiss and strike, filed. WCO
27	ORDER filed - DENYING DeKalb Co's motion to strike portions of pltfs' complaint; GRANTING DeKalb Co's motion to dismiss pltfs' complaint as to its claims of negligence, nuisance & for breach of contract; DENYING pltfs' motion to amend the complaint; and DENYING pltfs' discovery motions without prejudice to refile. (copy to counsel, 6/27) U S's cross-claims against DeKalb County still pending
26	Consent Order ext. time thru 7-10-74 for deft to respond to pltfs' interrogs. and requests for admission, filed. (CF)
JULY 3	Motion of Southeast Machinery, Inc., Machinery Buyers Corp. and Fireman's Fund InsuranceCompany to vacate, set aside, alter and amend the orders entered on June 27, 1974 and for reconsideration rehearing and new trial and memo in support, filed.

CONT.

D C 110A Rev. Civil Docket Continuation

DATE 1974	PROCEEDINGS
July 12	Brief of DeKalb Co., Ga. in opposition to the motions of Southeast Machinery, Inc., Machinery Buyers Corp., and Fireman's Fund Ins. to set aside, Vacate, Amend & alter the orders or for reconsideration rehearing, and new trial on the orders entered on 6-27-74, filed.
15	Response to pltf's 2nd request for admission addressed to defts. filed.
22	Supplemental brief of DeKalb Co, Ga in opposition to various motions filed by Southeast Machinery, Inc., et al, filed. (with attachment)
23	Pltfs' third interrogs to deft U S of A, filed.
29	SUBMITTED ON DEFTS' SOUTHEAST MACHINERY, INC., MACHINERY, INC., MACHINERY BUYERS CORP., & FIREMAN'S FUND INSURANCE CO.'S MOTION TO VACATE, SET ASIDE, ALTER AND AMEND THE ORDER OF 6/27/74 AND FOR RECONSIDERATION REHEARING AND NEW TRIAL.
31	Deft USA's Request To Produce & Permit Inspection and Copying, filed. (WCO)
	Deft USA's 3rd Interrogs. to the Miree Pltfs', filed. WCO
Aug. 1	Southeast Machinery, Inc., Machinery Buyers Corp. & Fireman's Fund Insurance Co's notice to take depositions, filed. WCO
2	Defts' Supplemental Notice to Take Depositions, w/exhibit A, filed.
5	Deft. U.S.A.'s answers to pltfs' Miree's interrogs., filed. WCO
19	Deft U.S.A.'s memorandum in support of the motion of Southeast Machinery, Inc., Machinery Buyers Corp., & Fireman's Fund Insurance Co.'s to vacate, set aside, alter and amend the orders entered on 6/27/74 and for reconsideration, rehearing & new trial, filed. WCO
20	Response of Machinery Buyers Corp., and Southeast Machinery, Inc., & Fireman's Fund Insurance Co. to the request to produce and permit inspection and copying filed by the USA, filed. WCO
22	ANSWERS of pltfs. to 3rd interrog. propounded by deft., United States of America, filed. WCO
27	United States' ANSWERS to the Miree pltf's 3rd interrog., filed. WCO
Sept. 4	Deft's request for production of documents, filed. WCO
25	ORDER that motion of Southeast Machinery & Machinery Buyers Corp. to se aside prior order dismissing DeKalb Co. is denied, there appear to be substantial grounds for differing opinions, as to...appeal ...will.. advance...litigation, the Clerk is directd to enter final judgment dismissing DeKalb County from this case, filed. (CF)
26	JUDGMENT filed and entered that the plaintiff take nothing, that the action be dismissed as to defendant DeKalb County and that the defendant DeKalb County cost to be taxed when final judg. to all ptys. filed. (CF)
OCT. 9	Pltfs' NOTICE OF APPEAL, OF Order of 9/25/74, filed.(Certified Copy of notice & docket sheet to USCA & copy counsel 10/11)
	$250.00 APPEAL BOND, filed.
10	Deposition of HENRY F. MANGET, JR., filed.
16	Deft, U. S. A's Motion for Partial Summary Judgment w/memorandum and exhibits, filed.
	Consent Order by Clerk extending time through December 2, 1974 for pltfs to respond to Motion for Partial Summary Judgment. filed. (CF)
	Letter from pltf's counsel regarding correspondence & notice of Election to defer Appendix which they sent to USCA, filed.
18	Pltf's response to deft, United States of America's Request for Production of Documents, w/attachments, filed.
24	Letter and 10/.../74, from Johnston, Barton, Proctor, Swedlaw & Naff with proposed Record On Appeal, filed.

continued

DATE 1974	PROCEEDINGS
Oct. 29	Letter from Long, Weimberg, Ansley & Wheeler to Alan W. Heldman Re: items to be placed in record on appeal, filed.
Nov. 1	Deft. U.S.'s Interrogs to Machinery Buyers Corp and Southeast Machi Inc., filed.
Nov 12	Stipulation of parties to record on appeal pursuant to Rule 11(f), F.RA.P, filed.
Nov 14	ORDER to forward copies of pleadings in accordance with the joint designation of record on appeal, filed. c. counsel.

ATTEST: A TRUE COPY
CERTIFIED THIS
11-14-74
Ben H. Carter, Clerk
By: Lorraine Nalley
Deputy Clerk

BEST COPY AVAILABLE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

[Filed in Clerk's Office Nov. 5, 1973,
Ben H. Carter, Clerk; By: P.J.E. Deputy Clerk.]

GEORGE HENSON MIREE,
CLAUDE ESTES MIREE and
DOROTHY ESTES MIREE, Minors,
by and through AUBREY S. MIREE, JR.
and CLAUDE H. ESTES, JR.,
Co-Guardians of said Minors,

Plaintiffs,

vs.

UNITED STATES OF AMERICA;
MACHINERY BUYERS CORP.;
SOUTHEAST MACHINERY, INC.; and
DEKALB COUNTY, GEORGIA,

Defendants.

CIVIL ACTION NO. 19293

COMPLAINT

Allegations of Jurisdiction

1.

Jurisdiction herein is based upon 28 U.S.C. §§1346(b), and 2671, 2674, and 2675.

2.

Jurisdiction is further founded upon diversity of citizenship.

3.

The minor Plaintiffs herein, GEORGE HENSON MIREE, CLAUDE ESTES MIREE, and DOROTHY ESTES MIREE, are all residents and citizens of the State

of Alabama and are represented herein by AUBREY S. MIREE, JR. and CLAUDE H. ESTES, JR., who were duly appointed Co-Guardians of said minors by the Probate [10] Court of Jefferson County, Alabama. Both of said Co-Guardians of said minors are residents and citizens of the State of Alabama.

4.

Defendants herein are as follows:

(a) UNITED STATES OF AMERICA. Appropriate claims for damages for the deaths of RICHARDSON F. MIREE and LUCY ESTES MIREE were submitted to the United States Department of Transportation, Federal Aviation Administration, Southern Region, 3400 Whipple Street, East Point, Georgia, on May 4, 1973. Since that time, said agency has failed to make a final disposition of the claims within six (6) months, and this Complaint is brought in accordance with the provisions of 28 U.S.C. §2675(a).

(b) DEKALB COUNTY, GEORGIA. Said COUNTY is located within the Northern District of Georgia and within the jurisdiction of this Court. Said Defendant will hereinafter be referred to as DEKALB COUNTY. The fiscal affairs of DEKALB COUNTY are committed to a Board of Commissioners, consisting of A. C. Guhl, Chairman, and William A. Williams, T. M. Callaway, Jr., Hoke Clayton Smith, Robert J. Morris, W. M. Coolidge, Jr. and Horis A. Ward. They will be referred to hereinafter as County Commissioners.

(c) MACHINERY BUYERS CORP., a Georgia corporation, with its principal office and place of doing business at I-20 East Access Road, Conyers, Georgia, with an agent for service, WILLIAM J. RIALS, at said address.

(d) SOUTHEAST MACHINERY, INC., a North Carolina corporation, which can be served by serving STANLEY E. GALKIN, Attorney at Law, at Equitable Building, Atlanta, Georgia 30303. [11] Said Attorney, STANLEY E. GALKIN, will accept service on behalf of said Defendant SOUTHEAST MACHINERY, INC.

The matter in controversy exceeds, exclusive of interest and costs, the sum of TEN THOUSAND ($10,000.00) DOLLARS.

Cause of Action

1.

Plaintiffs herein are GEORGE HENSON MIREE, CLAUDE ESTES MIREE, and DOROTHY ESTES MIREE, all minors. Plaintiffs show that the Defendants herein are jointly and severally liable to Plaintiffs for the full value of the life of their mother, LUCY ESTES MIREE, in the sum of ONE MILLION ($1,000,000.00) DOLLARS, and are jointly and severally liable to Plaintiffs for the full value of the life of their father, RICHARDSON F. MIREE, in the sum of FOUR MILLION FIVE HUNDRED THOUSAND ($4,500,000.00) DOLLARS.

2.

RICHARDSON F. MIREE and LUCY ESTES MIREE died on February 26, 1973, when the Gates Learjet Airplane on which they were riding crashed near the DeKalb Peachtree Airport in DeKalb County, Georgia.

3.

Said Gates Learjet Airplane, Model #24, designated "N454RN," was owned by Defendant SOUTHEAST

MACHINERY, INC. Defendant SOUTHEAST MACHINERY, INC. was and is a subsidiary corporation of Defendant MACHINERY BUYERS CORP., which operated said Gates Learjet by and through its pilot, Ernest F. Sellfors, and its co-pilot, David E. Phillips. The said Sellfors and Phillips were agents and servants of both SOUTHEAST MACHINERY, [12] INC. and MACHINERY BUYERS CORP., and all acts of said Sellfors and Phillips referred to herein were inputable to Defendants SOUTHEAST MACHINERY, INC. and MACHINERY BUYERS CORP.

4.

DeKalb-Peachtree Airport is located within the boundaries of DeKalb County on land owned by the County. Said Airport has paved runways and airport hangers, servicing and parking facilities, a control tower with radio facilities, instrument landing system control center, and access to other radio and navigational aids. The Airport is operated for the public welfare and benefit of the citizens of the UNITED STATES OF AMERICA and is operated under the jurisdiction of the Federal Aviation Administration.

5.

DEKALB COUNTY, GEORGIA, acquired the DeKalb-Peachtree Airport by way of quit-claim deed from the General Services Administration of the UNITED STATES OF AMERICA on February 15, 1960. The County's personnel operated the control tower at the DeKalb-Peachtree Airport from March, 1959, until January, 1963, when they were replaced by Federal Aviation Administration Air Traffic personnel. On February

26, 1973, the date of the fatal crash complained of herein, the tower was operated by Federal Aviation Administration Air Traffic personnel.

6.

Beginning in 1962, a portion of the land constituting the Airport site was used by DEKALB COUNTY as a landfill. In 1964 the dump was closed and remained closed until March, 1966, when it was reopened. Since that time DEKALB COUNTY has [13] utilized the Airport site for dumping refuse.

7.

Employees of DEKALB COUNTY at said DeKalb-Peachtree Airport have observed and reported a significant increase in the number of birds in the vicinity of the Airport following the utilization of the Airport site for garbage disposal.

8.

Prior to February 26, 1973, DEKALB COUNTY had been using the Airport site as a sanitary landfill or garbage dump where large quantities of raw garbage, refuse, offal, filth, waste and trash by the truck loads were dumped and deposited upon the Airport site numerous times during each day by personnel and vehicles controlled by said DEKALB COUNTY through its Sanitation Department and under the ultimate direction and control of the County Commissioners of DeKalb County.

9.

The said untreated raw garbage, refuse, trash, offal, filth and other waste material deposited by the Defendant DEKALB COUNTY as aforesaid have created,

and will create, a large area constituting an attraction to immense flocks of birds which are located about said Airport, the runways, ends of runways, and other areas. Said birds at certain times remain, walk, and run upon said runways and adjacent grass areas at the sides and ends of the runways, and congregate in the numerous trees at the end of said sides of said Airport area and runways. Said birds when located upon the Airport grounds often flew aloft in large flocks many times each day as aircraft would take off, approach, land [14] or fly near said Airport and constituted a continuous hazard at said Airport to the safety of said aircraft and to the safety and lives of the crews and passengers therein and to persons residing and located upon the ground in the vicinity of said Airport.

10.

All of the foregoing was known to the Defendant, DEKALB COUNTY, and to the County Commissioners thereof and their predecessors, and to the Defendant UNITED STATES OF AMERICA, and to the pilots of the Gates Learjet referred to aforesaid.

11.

The UNITED STATES OF AMERICA, through the Federal Aviation Administration, maintained a control tower at said Airport and directed the takeoff and landing of aircraft on February 26, 1973.

12.

The personnel employed by the Federal Aviation Administration operating said control tower on February 26, 1973, did negligently and recklessly allow the Learjet "N454RN" to take off by reason of knowledge that great

flocks of birds were flying in, around and about said Airport site.

13.

The UNITED STATES OF AMERICA, by and through the Department of Transportation, Federal Aviation Administration, had the responsibility for the administration of the Federal Airport Development Aid Program and its predecessor, the Federal Airport Act of 1946. Involved in the administration of the programs was the responsibility of enforcing the provisions of the various Grant Agreements issued in accordance with the provisions of these Acts. These Grant Agreements [15] included provisions under which the airport owners maintain and operate said airports in accordance with the standards said forth in these Agreements.

14.

In addition, the UNITED STATES OF AMERICA had the responsibility for and jurisdiction over the safety of DeKalb-Peachtree Airport to the extent that it was the duty of the UNITED STATES OF AMERICA, as a condition precedent to the granting of funds for Airport development, to receive assurances from the owners of the Airport that airport hazards would be mitigated.

15.

Beginning in June, 1962, the Federal Government has enter into six (6) Grant Agreements with DeKalb County, pursuant to which $1,025,224.06 has been paid to the County for the purpose of assisting the County in the improvement and development of DeKalb-Peachtree Airport.

16.

Associated with the various Grant Agreements is an airport layout plan developed by DeKalb County and approved by the Federal Aviation Administration which graphically illustrates the development and proposed development of the airport facilities and the use of the land included within the airport boundaries. Such use does not include a sanitary landfill or any other dumping ground for garbage.

17.

The UNITED STATES OF AMERICA, through the Federal Aviation Administration, recognized that the existence of a sanitary landfill on which garbage was dumped constituted an attraction of birds of various species, and that birds [16] constitute a definite hazard for aircraft taking off and landing.

18.

From March 9, 1970, through February 14, 1972, the Federal Aviation Administration communicated with officials of DeKalb County, both by letter and by conference, relative to alleviation of the bird hazard caused by the existence of the sanitary landfill and the dumping of garbage thereon. Subsequent to said date of February 14, 1972, and for more than one (1) year prior to the date of said fatal crash on February 26, 1973, no further communications, either by letter or by conference, were had by the Federal Aviation Administration with officials of DeKalb County directed toward the alleviation of such bird hazard.

19.

Said letters and conferences were of no avail, and both

the UNITED STATES OF AMERICA and DEKALB COUNTY failed to mitigate the hazard.

20.

On the 27th day of June, 1967, the Federal Aviation Administration and the UNITED STATES OF AMERICA entered into one of a series of similar agreements with DEKALB COUNTY, by and through the Chairman of the BOARD OF COMMISSIONERS OF ROADS AND REVENUES. A copy of said Agreement of June 27, 1967, is attached hereto, marked Exhibit "A," and made a part hereof by reference.

21.

Said Agreement, in Paragraph 12 of the Project Application, provided as follows:
[17]

> "The Sponsor will keep up to date at all times an airport layout plan . . . Such airport layout plan, and each amendment, revision, or modification thereof, shall be subject to the approval of the FAA, which approval shall be evidenced by the signature of a duly authorized representative of the FAA on the face of the airport layout plan. The Sponsor will not make or permit the making of any changes or alterations in the Airport or any of its facilities other than in conformity with the airport layout plan as so approved by the FAA, if such changes or alterations might adversely affect the safety, utility, or efficiency of the Airport."

22.

The UNITED STATES OF AMERICA and the Federal Aviation Administration allowed changes in the airport layout, contrary to the official layout plan, when

they knew of the existence of said sanitary landfill or garbage dump, and when the UNITED STATES OF AMERICA had the power and jurisdiction to have mitigated said Airport hazard.

23.

With further reference to said Agreement marked Exhibit "A," as a part of the consideration for the sums paid by the UNITED STATES OF AMERICA to DEKALB COUNTY, said DEKALB COUNTY, as Sponsor, agreed as follows:

> ". . . These covenants shall remain in full force and effect throughout the useful life of the facilities developed under this Project, . . ." (Project Appligation, Sponsor's Assurances, Paragraph 1).

[18] and

> "The Sponsor will operate the Airport as such for the use and benefit of the public. . . . That the Sponsor may prohibit or limit any given type, kind or class of aeronautical use of the Airport if such action is necessary for the safe operation of the Airport or necessary to serve the civil aviation needs of the public." (Project Application, Sponsor's Assurances, Paragraph 2).

and

> "The Sponsor will operate and maintain in a safe and serviceable condition the Airport and all facilities thereon and connected therewith which are necessary to serve the aeronautical users of the Airport other than facilities owned or controlled by the United States, and will not permit any activity thereon which would interfere with its use for airport purposes." (Project Application, Sponsor's Assurances, Paragraph 6).

and

> "In addition, the Sponsor will not erect or permit the erection of any permanent structure or facility which would interfere materially with the use, operation, or future development of the Airport, in any portion of a runway approach area in which the Sponsor has acquired, or may hereafter acquire, property interests permitting it to so control the use made of the surface of the land." (Project Application, Sponsor's Assurances, Paragraph 7).

[19] and

> ". . . The Sponsor will not make or permit the making of any changes or alterations in the Airport or any of its facilities other than in conformity with the airport layout plan as so approved by the FAA, if such changes or alterations might adversely affect the safety, utility, or efficiency of the Airport." (Project Application, Sponsor's Assurances, Paragraph 12).

and

> "Insofar as is within its power and to the extent reasonable, the Sponsor will take action to restrict the use of land adjacent to or in the immediate vicinity of the Airport to activities and purposes compatible with normal airport operations including landing and takeoff of aircraft." (Project Application, Sponsor's Assurances, Paragraph 13).

24.

The Defendant, DEKALB COUNTY, violated the provisions of said contract by willfully permitting the existence of a garbage dump and bird hazard on the Airport site. Said contract having been made for the benefit of the public, RICHARDSON F. MIREE and LUCY ESTES MIREE, deceased, and Plaintiffs herein were third party

beneficiaries of said contract and any other contracts and agreements similarly made between DEKALB COUNTY, represented by the County Commissioners, and the UNITED STATES OF AMERICA. The Defendant [20] DEKALB COUNTY is liable for breach of said contract and any other similar contract, and is liable for the wrongful deaths of RICHARDSON F. MIREE and LUCY ESTES MIREE resulting from negligence and recklessness growing out of the breach of said contract.

25.

On February 26, 1973, at approximately 10:10 A. M., E.S.T., air traffic control personnel of the Federal Aviation Administration of the Department of Transportation of the United States who were operating the control tower gave clearance to the Learjet airplane designated "N454RN" for takeoff from runway 20L at the DeKalb-Peachtree Airport. Prior to takeoff and at the time of takeoff there were thousands of birds in the vicinity of the Airport and in the vicinity of runway 20L. The existence of the birds was known to both the employees of DEKALB COUNTY who were operating the airport and to the Federal traffic air control personnel operating the airport control tower. Immediately after takeoff, the engines of Learjet "N454RN" ingested birds into both engines. The ingestion of the birds into both engines was the cause of the crash of said Learjet airplane which resulted in the deaths of RICHARDSON F. MIREE and LUCY ESTES MIREE.

26.

The pilot of the Learjet airplane, "N454RN", Ernest L. Sellfors, and the co-pilot, David E. Phillips, were the

agents, servants and employees of Defendants SOUTHEAST MACHINERY, INC. and MACHINERY BUYERS CORP. Said pilot and co-pilot were experienced and knew, or should have known, [21] that the existence of thousands of birds constituted a deadly hazard to a jet aircraft. Said pilot and co-pilot knew, or should have known, on the day in question prior to the takeoff of said Learjet airplane that there were thousands of birds in the vicinity of said Airport and particularly runway 20L. Said pilot and co-pilot should not have begun a takeoff of said Learjet airplane under the conditions existing at approximately 10:10 A.M., E.S.T., on February 26, 1973.

27.

By reason of the existence of said garbage dump prior to and on February 26, 1973, the operation of DeKalb-Peachtree Airport by DEKALB COUNTY and the UNITED STATES OF AMERICA constituted a public nuisance and a hazard to public safety.

28.

The maintenance of said garbage dump at said DeKalb-Peachtree Airport constituted an airport hazard as defined in 49 U.S.C. 1101, 49 U.S.C. 1711, and was a violation of 49 U.S.C. 1110(3) and 49 U.S.C. 1718(3).

29.

The UNITED STATES OF AMERICA, by and through its agents and employees, was guilty of negligence which proximately contributed to the deaths of RICHARDSON F. MIREE and LUCY ESTES MIREE in the following particulars:

(a) In failing to require DEKALB COUNTY to remove and mitigate the Airport bird hazard by reason

of the dumping of garbage on DeKalb-Peachtree Airport, the same being negligence per se and negligence as a matter of fact;

[22]

(b) In allowing jet propelled aircraft to operate in and out of DeKalb-Peachtree Airport when birds were a known hazard by reason of the existence of the garbage dump;

(c) In clearing Learjet "N454RN" for takeoff on February 26, 1973, in spite of the known existence of thousands of birds which were located in the vicinity of runway 20L at DeKalb-Peachtree Airport;

(d) In failing to give reasonable and adequate notice to pilots and airport operations personnel of the danger of birds to aircraft at the DeKalb-Peachtree Airport;

(e) In allowing DEKALB COUNTY to accomplish a change in the Airport layout plan of DeKalb-Peachtree Airport by establishing a garbage dump thereon, the same being in violation of the airport layout plan which had been previously approved by the UNITED STATES OF AMERICA.

30.

Defendants DEKALB COUNTY and COUNTY COMMISSIONERS, their predecessors in office, and their agents, servants and employees, were guilty of breach of contract and negligence arising out of breach of contract with the UNITED STATES OF AMERICA, all of which contributed proximately to the deaths of RICHARDSON F. MIREE and LUCY ESTES MIREE in the following particulars:

(a) By permitting changes in the DeKalb-Peachtree Airport and its facilities, other than in conformity with the airport layout plan as officially approved by the UNITED STATES OF AMERICA, where such changes adversely affected the safety of the Airport;

(b) In operating the DeKalb-Peachtree Airport for the benefit of the public, and in connection therewith failing to prohibit the use of jet propelled aircraft where a [23] portion of the airport was utilized as a garbage dump attracting large flocks of birds;

(c) In permitting activity at the Airport and facilities thereon which interfered with its use for airport purposes;

(d) In failing to restrict the use of land adjacent to runway 20L of the Airport to purposes compatible with normal operation of the Airport;

(e) In failing to abide by the specific warnings of the UNITED STATES OF AMERICA with respect to the hazard created by the garbage dump and the requests made to remove said dump;

(f) In dumping and depositing untreated garbage, trash, refuse, offal, filth and other waste materials on DeKalb-Peachtree Airport property;

(g) In failing to specifically warn airport personnel and jet aircraft owners and pilots of the danger created by flocks of birds located in and about the vicinity of the Airport;

(h) In recklessly and wantonly continuing to use Airport property for a garbage dump after receiving notice of the bird hazard.

31.

Defendants MACHINERY BUYERS CORP. and SOUTHEAST MACHINERY, INC. were guilty of gross negligence which proximately contributed to the deaths of RICHARDSON F. MIREE and LUCY ESTES MIREE in the following particulars:

(a) In taking off from DeKalb-Peachtree Airport

[23]

when thousands of birds were located in and about runway 20L;

(b) In failing to inquire of airport control personnel respecting the safety of a takeoff of a jet airplane on February 26, 1973, as such takeoff might relate to the [24] existence of birds in and about the Airport;

(c) In utilizing a jet aircraft for the carriage of passengers from DeKalb-Peachtree Airport when it was known, or should have been known, that a garbage dump existed which attracted large flocks of birds to the area.

32.

At the time of his death, RICHARDSON F. MIREE was 36 years of age and had a life-expectancy of 35.78 years in accordance with the Commissioners 1958 Standard Ordinary Mortality Table, and a life-expectancy of 38.90 years in accordance with the Annuity Mortality Table 1949, Ultimate. He was earning at the time of his death in excess of $130,000.00 per year. Plaintiffs herein show that the full value of the deceased, RICHARDSON F. MIREE, was FOUR MILLION, FIVE HUNDRED THOUSAND ($4,500,000.00) DOLLARS.

33.

At the time of her death, LUCY ESTES MIREE was 32 years of age and had a life-expectancy of 39.43 years in accordance with the Commissioners 1958 Standard Ordinary Mortality Table, and a life-expectancy of 47.77 years in accordance with the Annuity Mortality Table 1949, Ultimate. She was a faithful and dutiful housewife and mother. Plaintiffs herein sue for the full value of her life in the amount of ONE MILLION ($1,000,000.00) DOLLARS.

[25]

WHEREFORE, Plaintiff pray:

(a) That all of said Defendants be required to appear and answer this Complaint within the time allowed by law; and

(b) That Plaintiffs have judgment against the [25] Defendants in the total amount of FIVE MILLION, FIVE HUNDRED THOUSAND ($5,500,000.00) DOLLARS, with costs of this action.

HANSELL, POST, BRANDON & DORSEY

By: /s/ HUGH M. DORSEY, JR.
HUGH M. DORSEY, JR.

/s/ JULE W. FELTON, JR.
JULE W. FELTON, JR.

3300 First National Bank Tower
Atlanta, Georgia 30303
658-9600

JOHNSTON, BARTON, PROCTOR, SWEDLAW & NAFF

By: /s/ GILBERT E. JOHNSTON
GILBERT E. JOHNSTON

Attorneys for Plaintiffs

Twelfth Floor
Bank for Savings Building
Birmingham, Alabama 35203
205/322-0616

[26]

FEDERAL AVIATION AGENCY

GRANT AGREEMENT

Part 1-Offer

Date of Offer JUL 21 1967

Airport DeKalb-Peachtree Atlanta, Georgia

Project No. 9-09-050-0705

Contract No. FA-67-SO-1464

TO: The County of DeKalb, Georgia
(herein referred to as the "Sponsor")

FROM: The United States of America (acting through the Federal Aviation Agency, herein referred to as the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated May 30, 1967, for a grant of Federal funds for a project for development of the DeKalb-Peachtree Airport (herein called the "Airport"), together with plans and specifications for such project, which Project Application, as approved by the FAA is hereby incorporated herein and made a part hereof; and

WHEREAS, the FAA has approved a project for development of the Airport (herein called the "Project") consisting of the following-described airport development:

Acquire land for RPZ clear zone and approach to runway 28-20L (reimbursement for Parcel 51, including building relocation or removal and gas line relocation plus satisfactory property interests in Area C and related transitional areas); rehabilitate high intensity lighting, runway 9-27 (50% basis); install medium intensity lighting system, runway 16-34; clear approaches to runway 28-20L.

all as more particularly described in the property map and plans and specifications incorporated in the said Project Application;

EXHIBIT "A"

BEST COPY AVAILABLE

[27]

NOW THEREFORE, pursuant to and for the purpose of carrying out the provisions of the Federal Airport Act, as amended (49 U.S.C. 1101), and in consideration of (a) the Sponsor's adoption and satisfaction of the representations and assurances contained in said Project Application, and its acceptance of this Offer as hereinafter provided, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and the operation and maintenance of the Airport as herein provided, THE FEDERAL AVIATION AGENCY, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay, as the United States share of the allowable costs incurred in accomplishing the Project, 50 percent of all allowable project costs.

This Offer is made on and subject to the following terms and conditions:

1. The maximum obligation of the United States payable under this Offer shall be $ 200,366.

2. The Sponsor shall:

   (a) begin accomplishment of the Project within sixty (60) days after acceptance of this Offer or such longer time as may be prescribed by the FAA, with failure to do so constituting just cause for termination of the obligations of the United States hereunder by the FAA;

   (b) carry out and complete the Project without undue delay and in accordance with the terms hereof, the Federal Airport Act, and Sections 151.45-151.55 of the Regulations of the Federal Aviation Agency (14 CFR 151) in effect as of the date of acceptance of this Offer, which Regulations are hereinafter referred to as the "Regulations";

   (c) carry out and complete the Project in accordance with the plans and specifications and property map, incorporated herein, as they may be revised or modified with the approval of the FAA.

3. The allowable costs of the project shall not include any costs determined by the FAA to be ineligible for consideration as to allowability under Section 151.41 (b) of the Regulations.

4. Payment of the United States share of the allowable project costs will be made pursuant to and in accordance with the provisions of Sections 151.57-151.63 of the Regulations. Final determination as to the allowability of the costs of the project will be made at the time of the final grant payment pursuant to Section 151.63 of the Regulations. Provided, that, in the event a semi-final grant payment is made pursuant to Section 151.63 of the Regulations, final determination as to the allowability of those costs to which such semi-final payment relates will be made at the time of such semi-final payment.

5. The Sponsor shall operate and maintain the Airport as Provided in the Project Application incorporated herein and specifically covenants and agrees, in accordance with its Assurance 1 in Part III of said Project Application, that in its operation and the operation of all facilities thereof, neither it nor any person or organization occupying space or facilities thereon will discriminate against any person or class of persons by reason of race, color, creed or national origin in the use of any of the facilities provided for the public on the airport.

6. The FAA reserves the right to amend or withdraw this Offer at any time prior to its acceptance by the Sponsor.

7. This Offer shall expire and the United States shall not be obligated to pay any part of the costs of the Project unless this Offer has been accepted by the Sponsor on or before June 29, 1967 or such subsequent date as may be prescribed in writing by the FAA.

8. In addition the sponsor shall:

(a) Incorporate or cause to be incorporated in each contract for construction work under the project, or any modification thereof, the equal opportunity clause as set forth in Section 202 of Executive Order No. 11246 of September 24, 1965, or such modification thereof as may be approved by the Secretary of Labor.

(b) Incorporate or cause to be incorporated in each bid or proposal form submitted by prospective contractors for construction work under the project the provisions prescribed by Section 151.54(d) (1), Part 151, Federal Aviation Regulations.

(c) Be bound by said equal opportunity clause in any construction work under the project which it performs itself other than through its own permanent work force directly employed or through the permanent work force directly employed by another agency of government.

(d) Cooperate actively with the FAA and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor.

(e) Furnish the FAA and the Secretary of Labor such information as they may require for the supervision of such compliance and will otherwise assist the FAA in the discharge of its primary responsibility for securing compliance.

(f) Refrain from entering into any contract or contract modification subject to Executive Order No. 11246 with a contractor debarred from, or who has not demonstrated eligibility for, government

contracts and Federally assisted construction contracts pursuant to Part II, Subpart B of Executive Order No. 11246.

(g) Carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the FAA or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order No. 11246; and in the event that the sponsor fails or refuses to comply with its undertakings, the FAA may cancel, terminate or suspend in whole or in part any contractual arrangement it may have with the sponsor, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from such applicant, or may refer the case to the Department of Justice for appropriate legal proceedings.

9. The sponsor's financial records of the project, established, maintained and made available to personnel of the FAA in conformity to Section 151.55 of the Regulations of the Federal Aviation Agency (14 CFR 151) will also be available to representatives of the Comptroller General of the United States.

10. It is understood and agreed that the terms "Administrator of the Federal Aviation Agency," "Administrator" or "Federal Aviation Agency" wherever they appear in this Agreement, in the Project Application, plans and specifications or other documents constituting a part of this Agreement shall be deemed to mean the Federal Aviation Administrator or the Federal Aviation Administration as the case may be.

11. Notwithstanding the provision of Paragraph 3, Part III, of the Project Application, the sponsor covenants and agrees that it will not grant or permit any exclusive right forbidden by Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349) at the airport, or at any other airport now or hereafter owned or controlled by it. In furtherance of the policy of the FAA under this covenant, the sponsor agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm, or corporation the exclusive right at the airport or at any other airport now or hereafter owned or controlled by it, to conduct any aeronautical activities, including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their relationship to the operation of aircraft can be regarded as an aeronautical activity. The sponsor further agrees that it will terminate any such exclusive right (including any exclusive right to engage in the sale of gasoline or oil, or both) now existing at the airport, or at any other airport now or hereafter owned or controlled by it, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right, and certifies that there is no exclusive right not subject to termination under this provision."

12. The Federal Government does not now plan or contemplate the construction of any structures pursuant to Paragraph 9 of Part IVI - Sponsor's Assurances of the project application dated May 30, 1967, and, therefore it is understood and agreed that the Sponsor is under no obligation to furnish any areas or rights without cost to the Federal Government under this Grant Agreement. However, nothing contained herein shall be construed as altering or changing the rights of the United States and/or the obligations of the Sponsor under prior Grant Agreements to furnish rent-free space for the activities specified in such agreements.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and said Offer and Acceptance shall comprise a Grant Agreement, as provided by the Federal Airport Act, constituting the obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and the operation and maintenance of the Airport. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer and shall remain in full force and effect throughout the useful life of the facilities developed under the Project but in any event not to exceed twenty years from the date of said acceptance.

UNITED STATES OF AMERICA
FEDERAL AVIATION AGENCY
ADMINISTRATOR

By [signature] .....
(TITLE)
Area Manager, Atlanta

Part II-Acceptance

The County of DeKalb County, Georgia does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby accept said Offer and by such acceptance agrees to all of the terms and conditions thereof.

Executed this 27th day of August, 19 67

County of DeKalb, Georgia
(Name of Sponsor)

By [signature]
Bruce H. Manning, Jr.
Title Chairman, Board of Commissioners of Roads and Revenues

(SEAL)

Attest: [signature]
James E. Carroll
Title: Clerk, Board of Commissioners

CERTIFICATE OF SPONSOR'S ATTORNEY

I, [signature], acting as Attorney for County of DeKalb, Georgia (herein referred to as the "Sponsor") do hereby certify:

That I have examined the foregoing Grant Agreement and the proceedings taken by said Sponsor relating thereto, and find that the Acceptance thereof by said Sponsor has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the State of Georgia, and further that, in my opinion, said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at Decatur, Georgia this 27th day of August, 1967

[signature]
Title County Attorney

FAA FORM 1632-13 (6-63) USE PREVIOUS EDITION

...m Approved.
Budget Bureau No. 61-R0134.

UNITED STATES OF AMERICA
FEDERAL AVIATION AGENCY

PROJECT APPLICATION

(For Federal Aid for Development of Public Airports)

Part I—PROJECT INFORMATION

The DeKalb County (herein called the "Sponsor") hereby makes application to the Federal Aviation Agency (hereinafter called the "FAA"), for a grant of Federal funds pursuant to the Federal Airport Act and the Regulations issued thereunder, for the purpose of aiding in financing a project (herein called the "Project") for development of the DeKalb Peachtree Airport (herein called the "Airport") located in DeKalb County State of Georgia.

It is proposed that the Project consist of the following-described airport development:

Acquire land for approaches to runway 2R-20L including reimbursement for tract 51; rehabilitate high intensity runway lighting, runway 9-27; install medium intensity lighting system, runway 16-34; clear approaches to runway 2R-20L.

all as more particularly described on the property map attached (hereto as Exhibit "A")* (as Exhibit "A" to Project Application dated _____ for Project No. _____), and in the plans and specifications submitted to the FAA on May 5, 1967 and approved May 9, 1967 which are made a part hereof.

*Strike out the inappropriate clause.

THE FOLLOWING IS A SUMMARY OF THE ESTIMATED COSTS OF THE PROJECT:

ITEM	TOTAL ESTIMATED COST	ESTIMATED SPONSOR'S SHARE OF COST		ESTIMATED FEDERAL SHARE OF COST	
		AMOUNT	PER CENT	AMOUNT	PER CENT
1. Land Costs	361,732	180,866	50	180,866	50
*2. Construction Costs	24,000				
*3. Engineering and Supervision Costs	3,000				
4. Administrative Costs	1,000				
*5. Total of 2, 3, and 4 above	28,000	14,000	50	14,000	50
6. Contingencies	11,000	5,500	50	5,500	50
7. Total All Estimated Project Costs (Items 1, 5, and 6)	400,732	200,366		200,366	

*These items will vary for County and FAA share of costs when 25%/75% for H.I. Runway lighting system costs are determined.

Part II—REPRESENTATIONS

The Sponsor hereby represents and certifies as follows:

1. **Legal Authority.**—The Sponsor has the legal power and authority: (1) to do all things necessary in order to undertake and carry out the Project in conformity with the Act and the Regulations, (2) to accept, receive, and disburse grants of funds from the United States in aid of the Project, on the terms and conditions stated in the Act and the Regulations; and (3) to carry out all of the provisions of Parts III and IV of this Project Application.

2. **Funds.**—The Sponsor now has on deposit, or is in a position to secure, $ 200,366 for use in defraying the costs of the Project. The present status of these funds is as follows:

Airport construction and improvement fund

3. **Compatible Land Use.**—The Sponsor has taken the following actions to assure compatible usage of land adjacent to or in the vicinity of the airport:

Airport zoning has been passed and approved by the Federal Aviation Agency.

Adequate property interests are being acquired in clear zones.

4. Approvals of Other Agencies.—The Project has been approved by all non-Federal agencies whose approval is required, namely:

NONE REQUIRED

5. Defaults.—The Sponsor is not in default on any obligation to the United States or any agency of the United States Government relative to the development, operation, or maintenance of any airport, except as stated herewith:

NONE

6. Possible Disabilities.—There are no facts or circumstances (including the existence of effective or proposed leases, use agreements, or other legal instruments affecting use of the Airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project or carry out the provisions of Parts III and IV of the Project Application, either by limiting its legal or financial ability or otherwise, except as follows:

NONE

7. Land.—(a) The Sponsor holds the following property interest in the following areas of land[1] which are to be developed or used as part of or in connection with the Airport, subject to the following exceptions, encumbrances, and adverse interests, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

There has been no change in property interests in tracts No's. 1,2 and "A" since submittal of report of Lawyers Title Insurance Co. dated March 14, 1962 and Title Examination by Robert E. Mosley dated June 5, 1963, for Project No. 9-09-050-D402. Fee Simple title to tract 51, subject to terms and conditions contained in Quit-claim Deed dated Oct. 14, 1965 from General Services Admin. to DeKalb Co. Fee Simple Title to tracts B-1,C,D,E,F,G,H,I,O,Q,J,U,32,34,34A and 35 was acquired under -02,03,and 04 projects.

The Sponsor further certifies that the above is based on a title examination by a qualified attorney or title company and that such attorney or title company has determined that the Sponsor holds the above property interests.

[1] State character of property interest in each area and list and identify for each all exceptions, encumbrances, and adverse interests, such as liens, taxes and assessments, outstanding leases, easements, mineral rights, etc. The separate tracts of land need only be identified here by the area numbers shown on the property map.

(b) The Sponsor will acquire within a reasonable time, but in any event prior to the start of any construction work under the Project, the following property interest in the following areas of land[1] on which such construction work is to be performed, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

NONE REQUIRED

(c) The Sponsor will acquire within a reasonable time, and if feasible prior to the completion of all construction work under the Project, the following property interest in the following areas of land[1] which are to be developed or used as part of or in connection with the Airport as it will be upon completion of the Project, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

Satisfactory property interests in Area C and related transitional areas.

[1] State character of property interest in each area and list and identify for each all exceptions, encumbrances, and adverse interests, such as liens, taxes and assessments, outstanding leases, easements, mineral rights, etc. The separate tracts of land need only be identified here by the area numbers shown on the property map.

Part IV. SPONSOR'S ASSURANCES

In order to furnish the assurances required by the Act and Regulations the Sponsor hereby covenants and agrees with the United States, as follows:

1. These covenants shall become effective upon acceptance by the Sponsor of an offer of Federal aid for the Project or any portion thereof, made by the FAA and shall remain a part of the Grant Agreement thus formed. These covenants shall remain in full force and effect throughout the useful life of the facilities developed, herein, the Project, but in any event not to exceed twenty (20) years from the date of said acceptance of an offer of Federal aid for the Project.

2. The Sponsor will operate the Airport as such for the use and benefit of the public. In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically agrees that it will keep the Airport open to all types, kinds, and classes of aeronautical use without discrimination between such types, kinds, and classes: *Provided*, That the Sponsor may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the Airport as may be necessary for the safe and efficient operation of the Airport; *And Provided Further*, That the Sponsor may prohibit or limit any given type, kind, or class of aeronautical use of the Airport if such action is necessary for the safe operation of the Airport or necessary to serve the civil aviation needs of the public.

3. The Sponsor will not grant or permit any exclusive right for the use of the Airport forbidden by Section 308 of the Federal Aviation Act of 1958, and will otherwise comply with all applicable laws. In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm, or corporation the exclusive right for the conduct of any aeronautical activities on the Airport, including but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity: *Provided*, That the prohibition against the grant or permit of an exclusive right as set forth herein in no way alters the rights or obligations of the Sponsor under a surplus property instrument of transfer pursuant to which surplus property was conveyed to the Sponsor by the United States pursuant to the *Surplus Property Act of 1944, (61 Stat. 678), as amended.*

4. The Sponsor agrees that it will operate the Airport for the use and benefit of the public, on fair and reasonable terms, and without unjust discrimination. In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically covenants and agrees:

a. That in its operation and the operation of all facilities on the airport, neither it nor any person or organization occupying space or facilities thereon will discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of any of the facilities provided for the public on the Airport.

b. That in any agreement, contract, lease, or other arrangement under which a right or privilege at the Airport is granted to any person, firm, or corporation to conduct or to the public any service (including the furnishing of sales any accommodations, products, materials, or supplies) on the operation of aircraft at the Airport, the Sponsor will insert and enforce provisions requiring the contractor:

(1) to furnish said service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and

(2) to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; *Provided*, That the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. That it will not exercise or grant any right or privilege which would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance and repair) that it may choose to perform.

d. In the event the Sponsor itself exercises any of the rights and privileges referred to in subsection b, the services involved will be provided on the same conditions as would apply to the furnishing of such services by contractors under the provisions of subsection b above and prices of such subsection b.

5. Nothing contained herein shall be construed to prohibit the granting or exercise of an exclusive right for the furnishing of nonaviation products and supplies or any service of a nonaeronautical nature or to obligate the Sponsor to furnish any particular nonaeronautical service at the Airport.

6. The Sponsor will operate and maintain in a safe and serviceable condition the Airport and all facilities thereon and connected therewith which are necessary to serve the aeronautical users of the Airport other than facilities owned or controlled by the United States, and will not permit any activity thereon which would interfere with its use for airport purposes: *Provided*, That nothing contained herein shall be construed to require that the Airport be operated for aeronautical uses during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance; *And Provided Further*, That nothing herein shall be construed as requiring the maintenance, repair, restoration or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the Sponsor.

7. Insofar as it is within the power and reasonably possible, the Sponsor will take steps to enact and enforce such zoning ordinances and to take such other action as may be necessary or suitable to restrict the use of property in the vicinity of the Airport to activities and purposes compatible with normal airport operations including landing and takeoff of aircraft, and to prevent the erection or creation of future airport hazards or obstructions in the approach areas of the Airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in the most current edition of Advisory Circular (AC) No. 150/5300-13, or Advisory Circular (AC) No. 150/5300-1, which have been developed pursuant to the current approved airport layout plan. In addition, the Sponsor will not erect or permit the erection of any permanent structure or facility which would interfere materially with the use, operation, or future development of the Airport, in any portion of a runway approach area to which the Sponsor has acquired, or may hereafter acquire, property interests permitting it to so control the use and/or development of the land.

8. All facilities of the Airport developed with Federal aid and all those available for the landing and taking off of aircraft will be available to the United States at all times, without charge, for use by military and naval aircraft in common with other aircraft, except that if the use by military and naval aircraft is substantial, a reasonable share, proportionate to such use, of the cost of operating and maintaining facilities so used, may be charged. Unless otherwise determined by the FAA, or otherwise agreed to by the Sponsor and the using agency, substantial use of an airport by military and naval aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the FAA, would unduly interfere with use of the landing area by other authorized aircraft, or during any calendar month that:

a. Five (5) or more military or naval aircraft are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement and each takeoff as a movement) of military or naval aircraft is 500 or more, or the gross cumulative weight of military or naval aircraft using the Airport (the total movements of military or naval aircraft multiplied by gross certified weights of such aircraft) is in excess of five million pounds.

9. Whenever so requested by the FAA, the Sponsor will furnish without cost to the Federal Government, for construction, operation and maintenance of facilities for air traffic control activities, or weather reporting activities and communication activities related to air traffic control, such areas of land or water, or estate therein, or rights in buildings of the Sponsor as the FAA may consider necessary or desirable for construction of Federal airport or space or facilities for such purposes. The appropriate amounts of areas and the nature of the property interests and/or rights so required will be set forth in the Grant Agreement relating to the Project. Such areas or any portion thereof will be made available or provided herein within 4 months after receipt of written request from the FAA.

10. The Sponsor will furnish the FAA with such annual or special airport financial and operational reports as may be reasonably requested. Such reports may be submitted on forms furnished by the FAA, or may be submitted in such manner as the Sponsor elects so long as the essential facts are adequately disclosed. The Airport accounting system shall be maintained in such a manner as to clearly reflect the financial operations of the Airport. The Sponsor will furnish to the FAA, upon request, a true copy of any such document.

11. The Sponsor will not enter into any transaction which would operate to deprive any or all of the covenants made herein, unless by such transaction the obligation to perform all such covenants is assumed by the new or amended entity that may have the power, authority and financial resources to carry out all such covenants. If any such transaction is made for maintenance or operation of the Airport by any agency or person other than the Sponsor, or any change of the Sponsor, the Sponsor will require sufficient legal authority to insure that the Airport will be operated and maintained in accordance with the Act, the Regulations, and these covenants.

12. The Sponsor will keep up to date at all times an airport layout plan of the Airport showing: (1) the boundaries of the Airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the Sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), showing all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such airport layout plan, and each amendment, revision, or modification thereof, shall be subject to the approval of the FAA which approval shall be evidenced by the signature of a duly authorized representative of the FAA on or attached to the airport layout plan. The Sponsor will not make or permit any changes or alterations in the Airport or any of its facilities other than in conformity with the airport layout plan as so approved by the FAA, if such changes or alterations might adversely affect the safety, utility, or efficiency of the Airport.

13. Insofar as it is within its power and to the extent reasonable, the Sponsor will take action to restrict the use of land adjacent to or in the immediate vicinity of the Airport to activities and purposes compatible with normal airport operations including landing and takeoff of aircraft.

14. If at any time it is determined by the FAA that there is any outstanding right or claim of right in or to the Airport property, other than those set forth in Part II, paragraphs 7(a), 7(b), and 7(c), the existence of which creates an unacceptable risk of interference with the operation of the Airport or the performance of the covenants of this Part, the Sponsor will acquire, extinguish, or modify such right or claim of right in a manner acceptable to the FAA.

15. Unless the context otherwise requires, all terms used in these covenants which are defined in the Act and the Regulations shall have the meanings assigned to them there in.

16. Exhibit "B", Sponsor's Assurances of Nondiscrimination, is attached hereto and made a part hereof.

*Section 77.23 as applied to Section 77.27 Part 77 of the Federal Aviation Regulations.

Part IV- PROJECT AGREEMENT

If the Project or any portion thereof is approved by the FAA, and an offer of Federal aid for such approved Project is accepted by the Sponsor, it is understood and agreed that all airport development included in such Project will be accomplished in accordance with the Act and the Regulations, the plans and specifications for such development, as approved by the FAA, and the Grant Agreement with respect to the Project.

IN WITNESS WHEREOF, the Sponsor has caused this Project Application to be duly executed in its name, this 30th day of May, 19 67

DeKalb County, Georgia
(Name of Sponsor)

By Prince H. Manning, Jr.
Prince H. Manning, Jr.

Chairman, Board of Commissioners of Roads and Revenues
(Title)

OPINION OF SPONSOR'S ATTORNEY

I HEREBY CERTIFY that all statements of law made in this Project Application and all legal conclusions upon which the representations and covenants contained herein are based, are in my opinion true and correct.

George P. Dillard
George P. Dillard

DeKalb County Attorney
(Title)

30 May 1967
(Date)

SPONSOR AGREEMENT TO ACCOMPANY FEDERAL AVIATION ADMINISTRATION FORM 5102-1 FOR A GRANT OF FUNDS FOR THE DEVELOPMENT OF IMPROVEMENT OF THE DeKalb Peachtree AIRPORT

Non-Discrimination in Federally-Assisted Programs of the FAA. In order to further the assurance required by Title VI of the Civil Rights Act of 1964, and by Part 15 of the Federal Aviation Regulations, as amended, the DeKalb County, Georgia (hereinafter called the "Sponsor") hereby covenants and agrees with the United States (hereinafter called the "Government") as follows:

The Sponsor in the operation and use of the DeKalb Peachtree Airport, will not on the grounds of race, color, or national origin discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 15 of the Federal Aviation Regulations.

The Sponsor will include, or require the inclusion of, the foregoing covenant in every agreement or concession pursuant to which any person or persons, other than the Sponsor, operates or has the right to operate any facility on the Airport providing services to the public, and a provision granting the Sponsor the right to take such action as the Government may direct to enforce such covenant.

Noncompliance with the above assurances shall constitute a material breach, and in the event of such noncompliance the Government may take appropriate action to enforce compliance, may terminate the Grant Agreement to which this covenant relates, or seek judicial enforcement.

This covenant shall become effective upon execution of a Grant Agreement pursuant to the above identified project application and shall constitute part of the Grant Agreement to which it relates and shall remain in full force and effect so long as the airport covered by such agreement continues to be used and operated as a public airport.

DeKalb County Georgia
(Name of Sponsor)

By Prince H. Manning, Jr.

Title Chairman, Board of Commissioners of Roads and Revenues

30 May 1967
(Date)

(Name of Sponsor)

By

Title

(Date)

SO FORM 5102-2 (4-66)

[147]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION

[Filed in Clerk's Office Jan. 4, 1974,
Ben H. Carter, Clerk; By: P.J.E., Deputy Clerk.]

GEORGE HENSON MIREE, CLAUDE ESTES MIREE and DOROTHY ESTES MIREE, Minors, by and through AUBREY S. MIREE, JR. and CLAUDE H. ESTES, JR., Co-Guardians of said minors, *Plaintiffs,* vs. UNITED STATES OF AMERICA; MACHINERY BUYERS CORP.; SOUTHEAST MACHINERY, INC.; and DEKALB COUNTY, GEORGIA, *Defendants.*	CIVIL ACTION FILE NO. 19293

ANSWER OF DEFENDANT, DEKALB COUNTY, GEORGIA

Comes now DEKALB COUNTY, GEORGIA, and responds to the Complaint of Plaintiffs as follows:

RESPONSE AS TO ALLEGATIONS OF JURISDICTION

1.

DeKalb County, Georgia is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2 and 3 of the

Complaint of Plaintiffs as relates to allegations of jurisdiction.

2.

DeKalb County, Georgia admits the allegations contained in paragraph 4 (b) of the Complaint of Plaintiffs as relates to allegations of jurisdiction. Responding further, DeKalb County, Georgia is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in paragraph 4 of the Complaint of Plaintiffs.

[148] **RESPONSE TO CAUSE OF ACTION**

1.

DeKalb County, Georgia denies the allegations contained in paragraph 1 of the Complaint of Plaintiffs.

2.

This Defendant admits the allegations contained in paragraph 2 of the Complaint of Plaintiffs.

3.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint of Plaintiffs.

4.

Responding to paragraph 4 of the Complaint of Plaintiffs, this Defendant admits DeKalb-Peachtree Airport is located within the boundaries of DeKalb County on land owned by the County and that said Airport has paved runways and airport hangers, servicing and parking facilities, a control tower with radio facilities, instrument

landing system control center and access to other radio and navigational aids. Responding further, DeKalb County, Georgia admits the airport is operated under the jurisdiction of the Federal Aviation Administration and avers that the airport is operated for the use and benefit of the public. Further responding, all other allegations contained in paragraph 4 of the Complaint of Plaintiffs are denied.

5.

This Defendant admits the allegations contained in paragraph 5 of the Complaint of Plaintiffs.

6.

Responding to paragraph 6 of the Complaint of Plaintiffs, this Defendant admits only that beginning in 1962, a portion of the land contiguous to the land utilized as an airport was used by DeKalb County as a landfill. [149] Further responding, the landfill was closed in 1964 and remained closed until March, 1966. Responding further, DeKalb County admits that since March, 1966 the land contiguous to that land utilized for airport facilities was utilized again for landfill purposes. Further responding, all other allegations contained in paragraph 6 of the Complaint of Plaintiffs are denied.

7.

Defendant denies the allegations contained in paragraphs 7, 8 and 9 of the Complaint of Plaintiffs.

8.

DeKalb County, Georgia denies those allegations of paragraph 10 of the Complaint directed to it.

9.

This Defendant admits the allegations contained in paragraph 11 of the Complaint of Plaintiffs.

10.

The allegation of paragraph 12 of the Complaint of Plaintiffs is directed to the United States of America and a response is not required of this Defendant.

11.

Responding to paragraph 13 of the Complaint of Plaintiffs, DeKalb County, Georgia admits that the United States of America by and through the Federal Aviation Administration had the responsibility for the administration of the Federal Airport Development Aid Program. Responding further, this Defendant avers that the various Federal Grant Agreements speak for themselves in respect of the provisions of such Federal Grant Agreements and the remainder of the allegations contained in paragraph 13 of the Complaint of Plaintiffs are denied.

[150] 12.

This Defendant is not required to respond to paragraph 14 of the Complaint of Plaintiffs as the allegations contained therein are directed to the United States of America.

13.

This Defendant admits the allegations contained in paragraph 15 of the Complaint of Plaintiffs.

14.

Responding to paragraph 16 of the Complaint of Plaintiffs, DeKalb County, Georgia admits the existence of an

airport layout plan and avers that such airport layout plan includes "industrial use". The remainder of the allegations contained in paragraph 16 of the Complaint of Plaintiffs are denied.

15.

The allegations contained in paragraph 17 of the Complaint of Plaintiffs are directed to the United States of America and an answer is not required of this Defendant.

16.

Responding to paragraph 18 of the Complaint of Plaintiffs, DeKalb County, Georgia admits that from March 9, 1970 through February 14, 1972, the Federal Aviation Administration and DeKalb County, Georgia communicated both by letter and by conference in respect to land usage of the land utilized as an airport facility and that land contiguous thereto in respect of the sanitary landfill. Responding further, the remainder of the allegations contained in paragraph 18 of the Complaint of Plaintiffs are denied.

17.

DeKalb County, Georgia denies the allegations contained in paragraph 19 of the Complaint of Plaintiffs.

[151]

18.

DeKalb County, Georgia admits the allegations contained in paragraph 20 of the Complaint of Plaintiffs.

19.

Responding to paragraph 21 of the Complaint of Plaintiffs, DeKalb County, Georgia avers that paragraph 12 of the Project Application will speak for itself in respect

of its contents and no further answer is required of this Defendant.

20.

Responding to paragraph 22 of the Complaint of Plaintiffs, DeKalb County, Georgia avers that the United States of America and the Federal Aviation Administration has authority to allow changes in the airport layout plan and admits that the United States of America and the Federal Aviation Administration had knowledge of the existence of the sanitary landfill contiguous to the land utilized as an airport facility.

21.

Responding to paragraph 23 of the Complaint of Plaintiffs, DeKalb County, Georgia avers that the contents, provisions and agreements contained in Exhibit "A" of the Complaint of Plaintiffs are set out within said Exhibit and no further response to this paragraph is required by this Defendant.

22.

DeKalb County, Georgia denies the allegations contained in paragraph 24 of the Complaint of Plaintiffs.

23.

Responding to paragraph 25 of the Complaint of Plaintiffs, this Defendant admits the first sentence thereof wherein it is alleged the personnel of the Federal Aviation Administration gave clearance to the [152] Learjet airplane for takeoff from runway 20L at the DeKalb-Peachtree Airport. Responding further, DeKalb County is without knowledge or information sufficient to form a belief as to the truth of the allegation that the engines of the

Learjet aircraft ingested birds into both engines and that the ingestion of the birds caused the crash of said Learjet aircraft resulting in the deaths of Richardson F. Miree and Lucy Estes Miree. Responding further, this Defendant denies the remainder of the allegations contained in paragraph 25 of the Complaint of Plaintiffs.

24.

DeKalb County, Georgia is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint of Plaintiffs.

25.

DeKalb County, Georgia denies the allegations contained in paragraphs 27 and 28 of the Complaint of Plaintiffs.

26.

No response is required of DeKalb County, Georgia to the allegations contained in paragraph 29 of the Complaint of Plaintiffs as such allegations are directed to the United States of America.

27.

DeKalb County, Georgia denies the allegations contained in paragraph 30 of the Complaint of Plaintiffs and denies each and every sub-paragraph of paragraph 30 of the Complaint of Plaintiffs.

28.

DeKalb County, Georgia is not required to respond to paragraph 31 of the Complaint of Plaintiffs as such allegations are directed to Machinery Buyers Corp. and Southeast Machinery, Inc.

29.

Responding to paragraph 32 of the Complaint of Plaintiffs, DeKalb County, Georgia is without knowledge or information sufficient [153] to form a belief as to the truth of the allegations respecting the age, life expectancy and earnings of Richardson F. Miree. Responding further, DeKalb County, Georgia denies the remainder of the allegations contained in paragraph 32 of the Complaint of Plaintiffs and denies the allegation respecting the full value of the life of Richardson F. Miree.

30.

Responding to paragraph 33 of the Complaint of Plaintiffs, DeKalb County, Georgia is without knowledge or information sufficient to form a belief as to the truth of the age, and life expectancy of Lucy Estes Miree. Responding further, DeKalb County, Georgia denies the remainder of the allegations contained in paragraph 33 of the Complaint of Plaintiffs and denies the allegations in respect of the full value of the life of Lucy Estes Miree.

[153]

WHEREFORE, having fully answered, DeKalb County, Georgia demands trial by jury and prays it be hence discharged without liability.

JURY TRIAL DEMANDED ON ALL ISSUES

HARVEY, WILLARD & ELLIOTT

/s/ WENDELL WILLARD
WENDELL WILLARD

125 Trinity Place
Decatur, Georgia

LONG, WEINBERG, ANSLEY & WHEELER

/s/ MEADE BURNS
MEADE BURNS

/s/ EDWARD C. STONE
EDWARD C. STONE

3000 The Equitable Building
Atlanta, Georgia 30303
Phone: 525-5903

(Certificate of Service omitted in printing)

[156]

(Caption omitted in printing)

[155] Filed: Jan. 4, 1974

MOTION TO DISMISS

Comes now DEKALB COUNTY, GEORGIA, and pursuant to Fed. Rules Civ. Proc., Rule 12, 28 U.S.C.A. moves the Court that it be dismissed as a named party defendant in the above-styled action, showing the Court as follows:

1.

The Complaint of Plaintiffs fails to state a claim or cause of action against DeKalb County, Georgia upon which relief can be granted.

2.

Relief can be granted on none of Plaintiffs' claims against DeKalb County owing to the latter's governmental immunity.

3.

In particular, DeKalb County, Georgia, shows the Court that the Complaint of Plaintiffs fails to state a claim upon which relief can be granted in the following respects:

(a) In Georgia, no right of action will lie against a County for the creation and/or maintenance of a nuisance;

[156]

(b) There is no right of action in plaintiffs, as third-party beneficiaries, on any alleged breach of any Federal Grant Agreements entered into by and between DeKalb County, Georgia and the Federal Aviation Administration because there is no intent made manifest within such Federal Grant Agreements to confer

upon third persons the type of benefit claimed by plaintiffs in this action;

(c) Even if the Federal Grant Agreements entered into by and between DeKalb County, Georgia and the Federal Aviation Administration were intended to benefit the public in the manner claimed by plaintiffs, the Complaint shows on its face that these Federal Grant Agreements have not been breached by DeKalb County in operating a sanitary landfill on property contiguous to DeKalb-Peachtree Airport in that the Federal Aviation Administration is alleged to have had knowledge of and thus to have consented to and consciously allowed the maintenance of said landfill;

(d) Even if plaintiffs otherwise had the right to sue as third-party beneficiaries for an alleged breach of the Federal Grant Agreements entered into by DeKalb County, Georgia and the Federal Aviation Administration, plaintiffs cannot recover damages for any alleged wrongful deaths stemming from the alleged breach because a third-party beneficiary's rights under any contract are no greater than the rights of the parties themselves, and the Federal Grant Agreements which plaintiffs allege to have been breached confer no right on any party to recover damages for personal injury or wrongful death in the event of their breach;

(e) Plaintiffs cannot recover against DeKalb County on a theory of negligence as a matter of law owing to said [157] Defendant's governmental immunity from suit based on such a theory.

WHEREFORE, Defendant, DeKalb County, Georgia prays that this Motion to Dismiss be inquired into and sustained, and that DeKalb County, Georgia be dismissed as a party defendant hereto.

(Signature and Certificate of Service omitted in printing)

(Caption omitted in printing)

[159] Filed: Jan. 4, 1974

MOTION TO STRIKE OF DEFENDANT, DEKALB COUNTY, GEORGIA

Comes now DEKALB COUNTY, GEORGIA, named Defendant in the above-styled action, and pursuant to Fed. Rules Civ. Proc., Rule 12 (e), 28 U.S.C.A., moves the Court to strike certain allegations from Plaintiffs' Complaint, showing the Court as follows:

1.

Defendant moves to strike Paragraph 27 from Plaintiffs' Complaint on the ground that said paragraph fails to state a claim upon which relief can be granted in that in Georgia, an action will not lie against a County for the alleged creation and/or maintenance of a public nuisance.

2.

Defendant moves the Court to strike Paragraph 24 from Plaintiffs' Complaint on the ground that said paragraph fails to state a claim upon which relief can be granted in the following particulars:

(a) Plaintiffs cannot be third party beneficiaries to the contracts claimed in said paragraph to have been breached by this defendant since there is no intent in such contracts [160] to confer upon third persons the type of benefit claimed by plaintiffs in this action;

(b) Plaintiffs cannot recover as third party beneficiaries for the breach of said contracts on the basis of their Complaint, the allegations of which, considered as a whole, clearly fail to allege any breach of contract;

(c) Plaintiffs cannot recover damages for wrongful death as third party beneficiaries to the contracts because a third party beneficiary's rights under any contract are no greater than the rights of the parties themselves, and the contracts which plaintiffs alleged to have been breached in said paragraph confer no right on any party to recover damages for personal injury or wrongful death.

3.

Defendant moves to strike from plaintiffs' Complaint all portions of paragraph 30 and all subsections thereof which allege negligence on the part of Defendant on the ground that said allegations fail to state a claim upon which relief can be granted in that a County in Georgia is not subject to suit based on negligence owing to governmental immunity.

WHEREFORE, Defendant DeKalb County, Georgia prays that this Motion to Strike be inquired into and sustained.

(Signature and Certificate of Service omitted in printing)

(Caption omitted in printing)

[180] Filed: Jan. 22, 1974

PLAINTIFFS' FIRST AMENDMENT TO COMPLAINT

1.

Plaintiffs amend Paragraph 4 of the Complaint by adding a sub-paragraph to be known as sub-paragraph (e) as follows:

"(e) AMERICAN HOME ASSURANCE COMPANY is a New York corporation, having an office and place of doing business in Fulton County, Georgia; service may be had by serving its agent for service, ROY OVERSTREET, at 1819 Peachtree Road, Suite 610, Atlanta, Fulton County, Georgia."

2.

Plaintiffs add a new paragraph to be numbered 34 and to read as follows:

"34.

Defendant AMERICAN HOME ASSURANCE COMPANY issued a policy of liability insurance to Defendant DEKALB COUNTY, GEORGIA, insuring said DEKALB COUNTY, GEORGIA, against liability for bodily injury or death with limits of $100,000.00 for each person and $1,000,000.00 for each accident, and containing the following waiver of Governmental Immunity:

[181]

'It is agreed that the company waives any right to deny liability under the policy or to refuse payment within the limits thereof by reason of the non-liability of the insured political subdivision for the wrongful or negligent acts of its agents and em-

ployees and its immunity from suit as an agency of the State performing governmental function.

Said Defendant AMERICAN HOME ASSURANCE COMPANY and Defendant DEKALB COUNTY, GEORGIA, are liable to Plaintiffs herein by reason of the provisions of said policy and by reason of the facts hereinabove set forth. A copy of said insurance policy is attached hereto, marked Exhibit "B", and made a part hereof by reference."

3.

Plantiffs amend their Complaint by adding the following new paragraphs number 35 through 57 to read as follows:

"35.

The UNITED STATES OF AMERICA, through the Department of Transportation and the Administrator of the Federal Aviation Administration, (hereinafter referred to as "F.A.A."), has been directed by Congress in the Federal Aviation Act of 1958, as amended, to assume responsibility as follows:

'to develop plans for and formulate policy with respect to the use of the navigable airspace; and assign by rule, regulation, or order the use of the navigable airspace under such terms, conditions and limitations as he may deem necessary in order to insure the safety of aircraft and the efficient utilization of such airspace. He may modify or revoke such assignment when required in the public interest.' 49 § 1348(a)."

"36.

The United States of America, through the Department of Transportation and the Administrator of the F.A.A., is further authorized by Congress in said Act to assume responsibility as follows:

'(1) to acquire, establish, and improve air-navigation facilities wherever necessary;

(2) to operate and maintain such air-navigation facilities; . . .

(4) to provide necessary facilities and personnel for the regulation and protection of air traffic.' 48 U.S.C. § 1348(b)."

"37.

The United States of America, through the Department of Transportation and the Administrator of the F.A.A. is further directed by Congress in said Act to assume responsibility as follows:

'to prescribe air traffic rules and regulations governing the flight of aircraft, for the navigation, protection, and identification of aircraft, for the protection of persons and property on the ground, and for the efficient utilization of the navigable airspace, including rules as to safe altitudes of flight and rules for the prevention of collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects.' 49 U.S.C. § 1348(c)."

"38.

The aforementioned directions to and placement of responsibility on the United States of America are pursuant to the Congressional determination found at 49 U.S.C. § 1303 that the United States of America, through the Administrator of the F.A.A., shall consider the following as being in the public interest:

'(a) The regulation of Air commerce in such manner as to best promote its development and safety and fulfill the requirements of national defense;

(b) The promotion, encouragement, and development of civil aeronautics;

(c) The control of the use of the navigable airspace of the United States and the regulation of both civil and military operations in such airspace in the [183] interest of safety and efficiency of both;

(d) The consolidation of research and development with respect to air navigation facilities, as well as the installation and operation thereof;

(e) The development and operation of a common system of air traffic control and navigation for both military and civil aircraft.' "

"39.

The United States of America, through the Department of Transportation and the Administrator of the F.A.A., is further given the duty by Congress in said Act as follows:

'to promote safety of flight of civil aircraft in air commerce by prescribing and revising from time to time: . . .

(6) Such reasonable rules and regulations or minimum standards, governing other practices, methods, and procedure, as the Administrator may find necessary to provide adequately for . . . safety in air commerce.' 49 U.S.C. § 1421(a)(6)."

"40.

Pursuant to the aforesaid authority and directions from Congress the United States of America administers air traffic control of civil air operations within United States airspace; operates F.A.A. air route traffic control centers, airport traffic control towers, flight service stations, and related communications equipment required for control of air traffic; and collects and disseminates information relative to civil aeronautics and safety of flight."

"41.

Also pursuant to said Congressional authority and directions the United States of America has established as being necessary and operates air navigation facilities, including an Airport Traffic Control Tower (ATCT) at DeKalb-Peachtree Airport and a flight service station in Fulton County, Georgia, which flight [184] service station serves the geographical area in which DeKalb-Peachtree Airport is located."

"42.

An ATCT is a central operations facility in the terminal air traffic control system, consisting of a tower cab structure, including an associated IFR room if radar equipped, using air/ground communications and/or radar, visual signaling and other devices, to provide safe and expeditious movement of air and ground traffic."

"43.

The ATCT at DeKalb-Peachtree Airport is operated by the F.A.A. and is 'responsible for the safe, orderly and expeditious flow of air traffic in the vicinity of an [the] Airport.' 30 F.R. 3395, as amended; 16 F.R. 2975, 2979, revised 19 F.R. 2098, §24."

"44.

Said ATCT is manned by personnel (employed by the United States of America) 'who are responsible for the safe and orderly flow of air traffic in the vicinity of the Airport.' Their principal duties are as follows:

(a) 'To issue instructions to pilots for taxiing, take-off, approach for landing, and landing of aircraft.

(b) 'To inform pilots regarding field and weather conditions, air navigational facilities, emergency landing areas, restrictions to flight, regulations,

and other matters which may be of assistance to the pilot.

(c) 'To relay messages between pilots, airline operations offices, Air Route Traffic Control Centers, Weather Bureau offices, Communications Stations and other appropriate agencies concerning the operation, dispatch, and control of aircraft.

(d) 'To invoke emergency procedures when any emergency occurs or appears likely to occur to aircraft under tower control.

[185]

(e) 'When equipped with airport surveillance and precision approach radar, to monitor aircraft arriving and departmentfrom an airport on instruments, and, in an emergency or upon request, issuing ground controlled approach instructions (GCA) for a let-down.' 16 F.R. 2974, 2979, revised 19 F.R. 2098, §24.

"45.

Pursuant to the authority and directions of Congress, the United States of America, through the Department of Transportation and the F.A.A., prior to the crash in question had issued Advisory Circular No. 150/5200-3A, dated March 2, 1972, entitled 'Bird Hazards to Aircraft,' in which the United States of America through said agencies stated in part as follows:

'Migratory birds, particularly waterfowl, are a hazard to aircraft due to their size and weight. In recognition of this potential hazard, F.A.A. Air Traffic Control and Flight Service Station facilities issue advisory information on bird activities when they are reported or when they have knowledge of such activities. Information given to pilots includes the position, species or size of bird if known, and their course and altitude.' "

"46.

The F.A.A. in said Advisory Circular also admitted that the birds of greatest potential hazard to aircraft because of size, abundance, or habit of flying in dense flocks, include starlings; that birds of these species are considered particularly hazardous during spring and fall migrations and when they are concentrated in wintering areas; and that at some airports there are large flocks of certain birds which could be a problem during certain seasons. DeKalb-Peachtree Airport is not named or referred to in said Advisory Circular."

[186]

"47.

To cope with these admitted flight hazards, the Advisory Circular states that the United States of America, through the F.A.A., is operating as follows:

'F.A.A. Air Traffic Control and Flight Service Station facilities coordinate with airport management for either appropriate alerting action by a Notice to Airmen when flocks of birds are noted to remain in the airport vicinity or for possible closing by a Notice to Airmen when flocks roose on runways.' "

"48.

The Federal Government personnel providing terminal air traffic control services at airports, including DeKalb-Peachtree Airport, are required by the United States of America to be familiar with the provisions of the Terminal Air Traffic Control Manual, 7110.8, one of the air traffic control manuals referred to in Part 65 of the Federal Aviation Regulations, in which Manual are set forth the following duties and responsibilities of air traffic control personnel:

'If you observe or are informed of any condition which affects the safe use of a landing area:

(a) Relay the information to the airport manager concerned.

(b) Issue a Notice to Airmen publicizing an unsafe condition if you are unable to contact the airport manager (or if there is no airport manager designated) and then inform the manager as soon as practicable. . . .'

'122. BIRD ACTIVITY
ADDNL SVC

'a. Issue advisory information on the position and, if known, species or size of birds, and their course of flight and altitude if you believe that the safety of flight in that area may be affected. Do this for at least 15 minutes after receipt of such information from pilots or from adjacent facilities unless visual observation or subsequent reports reveal the activity is no longer a factor.'

[187]

'1552. BIRD ACTIVITY INFORMATION

A. Issue advisory information pilot-reported or radar-observed and pilot-verified bird activity. Include position, species or size of birds, if known, course of flight and altitude. (E)

Phraseology:

FLOCK OF (Species, if known)/(size, if known) BIRDS, (number) O'CLOCK (number of miles) MILES (direction) BOUND:

LAST REPORTED AT (altitude, as determined from pilot report).

or

ALTITUDE UNKNOWN.
FLOCK OF (species, if known)/(size, if known) BIRDS (direction) BOUND ALONG (flyway or geographical route):

LAST REPORTED AT (altitude, as determined from pilot report).

or

ALTITUDE UNKNOWN.
FLOCK OF/NUMEROUS FLOCKS (species, if known)/(size, if known) BIRDS, VICINITY (location):

LAST REPORTED AT (altitude, as determined from pilot report).

or

LATITUDE UNKNOWN.
b. Relay bird activity information to adjacent facilities and to FSS's whenever it appears it will become a factor in their areas.' "

"49.

The Defendant UNITED STATES OF AMERICA, by and through its agents and employees, was guilty of negligence which proximately contributed to the death of RICHARDSON F. MIREE and LUCY ESTES MIREE in that the Atlanta Flight Service Station personnel and the DeKalb-Peachtree Airport air traffic control tower personnel negligently approved the IFR flight plan filed by the crew of the LEARJET and negligently cleared the LEARJET for takeoff from [188] Runway 20L, contrary to the provisions of the Terminal Air Traffic Control Manual referred to in paragraph No. 48 above, and the Advisory Circular referred to in paragraphs Nos. 45, 46 and 47 above, and the provisions of the Federal Register referred to in paragraphs Nos. 43 and 44 above."

"50.

The Defendant UNITED STATES OF AMERICA, by direction of Congress, is responsible for certification

of aircraft as airworthy and for issuing type and production certificates for aircraft, including the Learjet Model 24. The Defendant UNITED STATES OF AMERICA, by and through its agents and employees, was guilty of negligence which proximately contributed to the death of RICHARDSON F. MIREE and LUCY ESTES MIREE as follows:

(a) In issuing a type certificate, production certificate and airworthiness certificate for the Learjet Model 24, including the accident aircraft, without any restrictions as to use of the aircraft in areas of known bird hazards, when Defendant UNITED STATES OF AMERICA knew that the aircraft was capable of ingesting birds and that bird ingestion on takeoff would cause a power loss and a resulting dangerous hazard to the safety of the airplane and all persons aboard the airplane;

(b) In failing to place restrictions on the type certificate, production certificate and airworthiness certificate of the Learjet Model 24, forbidding operation of the aircraft in areas of known bird hazards;

(c) In failing to prohibit operation of Learjet Model 24 aircraft at DeKalb-Peachtree Airport, when Defendant UNITED STATE OF AMERICA knew that a bird hazard existed at said airport; and

[189]

(d) In failing to devise a system or procedure whereby Learjet Model 24 aircraft would not be cleared for takeoff at DeKalb-Peachtree Airport when a bird hazard was known by Defendant UNITED STATES OF AMERICA to exist at said airport, without first determining whether at the time of takeoff birds were present in sufficient quantity to be a menace and hazard to safety of flight."

"51.

(a) Georgia Code Section 11-402(2) defines an 'air-

port hazard' as any structure which is hazardous to the use of an airport for the taking off and landing of airplanes.

(b) Georgia Code Section 11-403 declares that an airport hazard endangers the lives and property of users of the airport and is therefore not in the interest of the public health, public safety or general welfare.

(c) Georgia Code Section 11-9902 declares that the violation of any airport zoning regulations shall constitute a misdemeanor.

(d) Section 1(b) of the 1960 DeKalb County Airport Zoning Resolution concerning DeKalb-Peachtree Airport defines an 'airport hazard' as any structure or use of land which is 'hazardous to such landing or taking off of aircraft.'

(e) Section 5 of the 1960 DeKalb County Airport Zoning Resolution declares that no use may be made of land within any airport approach surface zone, horizontal surface zone, conical surface zone or transitional surface zone at DeKalb-Peachtree Airport, in such manner as to endanger the landing, taking off or manuevering of aircraft.

[190]

(f) Section 8 of the 1960 DeKalb County Airport Zoning Resolution declares that no material change shall be made in the use of land at DeKalb-Peachtree Airport and no structure shall be erected, altered, planted or otherwise establish in any airport approach surface zone, horizontal surface zone, or conical surface zone unless a permit therefor shall have been applied for and granted. Said Section 8 also declares that no permit shall be granted that would allow the establishment or creation of an airport hazard or permit a non-conforming use or structure to become a greater hazard to air navigation.

(g) Section 14 of said 1960 DeKalb County Airport Zoning Resolution also declares that every violation of

said Resolution shall be punishable by fine or imprisonment, or both.

(h) The open garbage dump in question in this case is an airport hazard, as defined by Georgia Code Section 11-402(2) and Section 1(b) of the aforesaid Zoning Resolution. No permit was ever applied for or granted with respect to the establishment and operation of said open garbage dump. The maintenance of said open garbage dump is forbidden by Georgia Code Section 11-403, and by Sections 5 and 8 of said Zoning Resolution. The actions of Defendant DEKALB COUNTY, GEORGIA, in establishing and operating said open garbage dump violated the aforesaid laws of Georgia and the aforesaid Zoning Resolution, and constitute negligence per se proximately contributing to the death of RICHARDSON F. MIREE and LUCY ESTES MIREE."

"52.

Defendant DEKALB COUNTY, GEORGIA, was also guilty of negligence per se proximately contributing to the death of RICHARDSON F. MIREE and LUCY ESTES MIREE in that Defendant [191] DEKALB COUNTY, GEORGIA, enhanced and increased the bird-attracting nature of said open garbage dump by failing to place a compacted layer of at least six inches of clean earth over all exposed solid waste at the end of each day's operation, and by failing to spread solid waste in uniform layers not over two feet thick, and by failing to compact solid waste prior to covering with earth, and by otherwise operating and maintaining said open garbage dump in violation of the Georgia Solid Waste Management Act (Georgia Code Sections 43-1601, *et. seq.*) and the Rules and Regulations of the Georgia Department of Natural Resources, Environmental Protection Division, concerning Solid Waste Management (Rules and Regula-

tions of the State of Georgia, Sections 391-1-1-.1 *et. seq.*)."

"53.

At all times relevant it was the duty of Defendant DEKALB COUNTY, GEORGIA, to operate and manage DeKalb-Peachtree Airport in a safe condition. Defendant DEKALB COUNTY, GEORGIA, was guilty of negligent acts and failures to act and dereliction of duties proximately contributing to the death of RICHARDSON F. MIREE and DOROTHY ESTES MIREE, in that Defendant DEKALB COUNTY, GEORGIA, at all times relevant had actual, personal knowledge of the bird hazard and unsafe condition that existed at the Airport, and in that Defendant DEKALB COUNTY, GEORGIA, had ample opportunity either to remove the bird hazard and unsafe condition or to prohibit the operation of jet aircraft at the Airport, and in that Defendant DEKALB COUNTY, GEORGIA, failed to heed the warnings of the F.A.A. and others concerning such bird hazard and unsafe condition, and in that [192] Defendant DEKALB COUNTY, GEORGIA, willfully, wantonly, recklessly and negligently failed either to alleviate the bird hazard and unsafe condition, or to prohibit operation of jet aircraft at the Airport, or to warn the flight crews of jet aircraft of the bird hazard and unsafe condition, or to devise a system, plan or procedure for the warning of jet flight crews of the bird hazard or unsafe condition."

"54.

The willful, wanton nature of the negligence and dereliction of duties of Defendant DEKALB COUNTY, GEORGIA, and the seriousness of the negligence and carelessness of Defendant UNITED STATES OF AMERICA are exemplified by the fact that prior to the fatal crash in question, Defendant DEKALB COUNTY, GEORGIA, and Defendant UNITED

STATES OF AMERICA had received notice of several airplane bird-strike or near bird-strike incidents within the airport boundaries, but despite this knowledge of prior incidents Defendant DEKALB COUNTY, GEORGIA, and Defendant UNITED STATES OF AMERICA failed to take any action at all to prevent a recurrence of such incidents."

"55.

(a) DeKalb-Peachtree Airport is not owned, operated, managed and maintained by Defendant DEKALB COUNTY, GEORGIA, as a governmental function or enterprise, but, instead, is owned, operated, and maintained and managed by Defendant DEKALB COUNTY, GEORGIA, as a proprietary or ministerial [193] function or enterprise. In this connection, Plaintiffs show that Defendant DEKALB COUNTY, GEORGIA, leases substantial portions of the Airport to private companies engaged in commercial operations for profit; that some of such leases are for fixed rental amounts and the remaining leases are for fixed rental amounts plus a percentage of the revenues or income derived by the genants from their commercial operations; that the revenues thus obtained by Defendant DEKALB COUNTY, GEORGIA, are not insignificant, but are substantial; and that the Airport is owned, operated, managed and matintained by Defendant DEKALB COUNTY, GEORGIA, primarily as a source of revenue for Defendant DEKALB COUNTY, GEORGIA. In effect, with respect to ownership, operation, management and maintenance of the Airport, Defendant DEKALB COUNTY, GEORGIA acts as a private landlord and not as a governmental entity.

(b) Plaintiffs show that prior to the date of the crash in question, Defendant DEKALB COUNTY, GEORGIA, purchased the policy of liability insurance

from Defendant AMERICAN HOME ASSURANCE COMPANY which is referred to hereinabove, providing bodily injury liability insurance to Defendant DEKALB COUNTY, GEORGIA, with respect to the ownership, operation, management and maintenance of DeKalb-Peachtree Airport by said Defendant DEKALB COUNTY, GEORGIA, said policy containing a 'Waiver of Governmental Immunity' which is set out hereinabove.

(c) Defendant DEKALB COUNTY, GEORGIA, is not entitled to the benefit or protection of the doctrine of sovereign immunity with respect to the claims of Plaintiffs herein."

[194] "56.

Plaintiffs show that by virtue of the operation of DeKalb-Peachtree Airport by Defendant DEKALB COUNTY, GEORGIA, under the Uniform Airport Act (Georgia Code Section 11-204, *et seq.*), and under the Federal Airport and Airway Development Act (49 U.S.C. §§ 1711, *et seq.*), and its predecessor, the Federal Airport Act (49 U.S.C. §§ 1101, *et seq.*), and by virtue of the Grant Agreements and payments of Federal funds referred to earlier in this lawsuit, and by virtue of the application of the provisions of the Georgia Solid Waste Management Act and the Rules and Regulations of the Georgia Department of Natural Resources, Environmental Protection Division (Solid Waste Management) to the facts of this case, and by virtue of the application of the 1960 DeKalb County Airport Zoning Resolution to the facts of this case, an express or implied statutory waiver of the doctrine of sovereign immunity exists with respect to the claims of Plaintiffs against Defendant DEKALB COUNTY, GEORGIA. In the alternative, as a result of the acts and failures to act of Defendant DEKALB COUNTY, GEORGIA, as alleged herein, and as a result of the

acceptance and retention of benefits by the Defendant DEKALB COUNTY, GEORGIA, under the various statutes, rules and regulations and Grant Agreements referred to herein, Defendant DEKALB COUNTY, GEORGIA, either expressly or impliedly has waived any defense based upon the doctrine of sovereign immunity, with respect to the claims of Plaintiffs herein."

[195] "57.

Plaintiffs allege that Defendant DEKALB COUNTY, GEORGIA, is not entitled to the defense of sovereign immunity because *Ga. Code Ann.* § 23-1502, which reads

> "A county is not liable to suit for any cause of action unless made so by statute",

is unconstitutional in that such statute violates the equal protection and due process clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States and of Article I, Section I, Paragraphs II and III of the Constitution of Georgia by reason that such statute, on its face and as applied to the Plaintiffs and Defendant DEKALB COUNTY, GEORGIA:

1. denies Plaintiffs due process of law,

2. denies Plaintiffs equal protection of law, and

3. creates an arbitrary classification which contravenes the due process requirements of the federal and state Constitutions."

(Signature Omitted in Printing)

AMERICAN HOME ASSURANCE COMPANY
NEW YORK, NEW YORK A CAPITAL STOCK COMPANY FOUNDED 1899

AVIATION INSURANCE POLICY
Issued Through
WESTMINSTER
INSURANCE MANAGERS, INC.

275 FOREST AVENUE
PARAMUS, NEW JERSEY 07652

TELEPHONE AREA CODE 201 265-4515
WESTERN UNION TELEX 13-4338

PLEASE READ YOUR POLICY

IN EVENT OF ACCIDENT

1. Get immediate first aid for all injured parties.
2. Protect the aircraft whether the loss is insured or not.
3. Give no statements to anyone except police officers, F.A.A. officials (or other government officials having jurisdiction over civil aviation) and your Insurance Company representative.
4. Secure all possible information including names and addresses of those involved and witnesses.
5. Report all accidents to Westminster Insurance Managers, Inc. promptly. If BODILY INJURY is involved Telex or Telephone and follow with written report.

"The air, to an even greater extent than the sea, is terribly unforgiving of any carelessness, incapacity or neglect".

AMERICAN HOME ASSURANCE COMPANY
NEW YORK, NEW YORK
(A stock company, hereinafter called the company)

Agrees with the insured named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations and application and subject to the Limits of Liability, Exclusions, Conditions and other terms of this policy to afford insurance only with respect to such and so many of the following coverages as are indicated by specific premium charge or charges as set forth in the declarations.

Insuring Agreements

1. Insurance Coverages Defined

Aircraft Liability. To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of:

Coverage A — Bodily Injury sustained by any person except a passenger;

Coverage B — Property Damage, injury to property of others;

Coverage C — Passenger, injury sustained by any passenger;

Coverage D — Single Limit, injury sustained by any person and injury to property of others;

Coverage E — Single Limit, injury sustained by any person, except a passenger and injury to property of others;

caused by an occurrence and arising out of the ownership, maintenance or use of the aircraft.

Coverage F — Medical Coverage. To pay all reasonable expenses incurred within one year from the date of accident, for necessary medical, surgical, dental, ambulance, hospital, professional nursing and funeral services, to or for each passenger who sustains injury caused by accident, provided the aircraft is being used by the named Insured or with his permission. This Coverage shall not apply to any pilot, attendant, or other crew member of the aircraft, unless "crew" is expressly specified as included in the Declarations.

Hull Coverages — To pay for direct loss of or damage to the aircraft, subject to the exclusions, conditions and other terms of this policy when caused by;

Coverage G — All Risks of Physical Loss or Damage to the Aircraft. The aircraft shall be presumed lost in flight if it disappears after take-off and is not located nor its whereabouts reported within sixty days thereafter;

Coverage H — All Risks of physical loss or damage to the aircraft while not in motion;

Coverage I — All Risks of physical loss or damage to the aircraft while not in flight;

Coverage J — As endorsed hereon

II. Defense, Settlement, Supplementary Payments (Coverages A, B, C, D and E). As respects such insurance as is afforded by the other terms of this policy, the company shall: (a) defend in his name and behalf any suit against the insured alleging such injury, sickness, disease or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent, but the company shall have the right to make such investigation, negotiation and settlement of any claim or suit as may be deemed expedient by the company; (b) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, all costs taxed against the insured in any such suit, all expenses incurred by the company, all interest accruing after entry of judgment until the company has paid, tendered or deposited in court such part of such judgment as does not exceed the limit of the company's liability thereon, expenses incurred by the insured, in the event of bodily injury, sickness or disease, for such immediate medical and surgical relief to others as shall be imperative at the time of the occurrence; and (c) reimburse the insured for expenses, other than loss of earnings, incurred at the company's request.

The company agrees to pay the amounts incurred under this Insuring Agreement, except settlement of claims and suits, in addition to the applicable limit of liability of this policy.

III. Definition of "Insured" (Coverages A, B, C, D, E and F). The unqualified word "insured" wherever used includes not only the named insured but also any person while using the aircraft and any person or organization legally responsible for its use, provided the actual use is with permission of the named insured. The provisions of this paragraph do not apply: (a) to any person or organization with respect to bodily injury, sickness, disease or death of any person who is a named insured, (b) to any employee or official of an insured with respect to any action brought against said employee or official because of bodily injury, sickness, disease or death of another employee of the same insured injured in the course of such employment in an occurrence arising out of the maintenance or use of the aircraft in the business of such insured, (c) to any person or organization, or to any agent or employee thereof (other than agents or employees of the named insured) engaged in the manufacturing of aircraft, aircraft engines, or aircraft accessories, or operating an aircraft repair shop, airport, hangar, aircraft sales agency, flying club or flying school, with respect to any occurrence arising out of the manufacture or the operation thereof; (d) to any person or organization (other than the named insured) operating the aircraft under the terms of any rental agreement or to any person or organization or any agent or employee thereof (other than the named insured, its agents and employees) operating the aircraft under the terms of any training program which provides any remuneration to the named insured for the use of said aircraft.

IV. Use of Other Aircraft (Pleasure and Business or Industrial Aid Uses Only—Coverages A, B, C, D, E and F). Such insurance as is afforded by this policy with respect to the aircraft applies to the named insured, if an individual and the owner of such aircraft with respect to the operation of any other aircraft of similar type, horsepower and seating capacity by such named insured or with respect to the presence of such named insured in such other aircraft. This insuring agreement does not apply: (a) to any aircraft owned in full or in part by, licensed in the name of, hired as part of a frequent use of hired aircraft by, or furnished for regular use to the named insured or a member of his household; (b) to any occurrence arising out of the operation of an airport, aircraft repair shop, hangar, aircraft sales agency, flying school, flying club or the manufacture of aircraft, aircraft engines or aircraft accessories.

V. Temporary Use of Substitute Aircraft (Coverages A, B, C, D, E and F). While an aircraft owned by the named insured is withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction, such insurance as is afforded by this policy with respect to such aircraft applies with respect to another aircraft of similar type, horsepower and seating capacity not so owned while temporarily used as the substitute for such aircraft. This insuring agreement does not cover as an insured the owner of the substitute aircraft or any agent or employee of such owner.

VI. Automatic Insurance for Newly Acquired Aircraft (Pleasure and Business or Industrial Aid Uses Only) (Liability, Medical and Hull Coverages A, B, C, D, E, F, G, H and I). If the named insured who is the owner of the aircraft acquires ownership of another aircraft of similar type, horsepower and seating capacity and so notifies the company within ten days following the date of its delivery to him, such insurance as is afforded by this policy applies also to such aircraft as of such delivery date: (a) if it replaces an aircraft described in this policy, but only to the extent the insurance is applicable to the replaced aircraft, or (b) if it is an additional aircraft and if the company insures all aircraft owned by the named insured at such delivery date.

Unless otherwise agreed in writing between the named insured and the Company, the Coverages Limits of Liability and Amount of Insurance for such newly acquired aircraft shall be as respects:

(a) Liability and Medical Coverages — not to exceed the limits originally provided for any owned aircraft;

(b) Hull Coverages — the actual cost of the aircraft to the named insured, but not to exceed the highest amount of insurance on any described aircraft and subject to the same deductibles.

This insuring agreement does not apply: (a) to any loss against which the named insured has other valid and collectible insurance, or (b) except during the policy period, but if such delivery date is prior to the effective date of this policy, the insurance applies as of such effective date.

The named insured shall pay any additional premium required because of the application of the insurance to such other aircraft. The insurance terminates upon a replaced aircraft on the delivery time and date.

VII. Occurrences, Policy Period, Territory, Purpose of Use. This policy applies only to occurrences during the policy period while the aircraft is within the United States of America (excluding Alaska), Canada, or the Republic of Mexico, or is being transported between ports thereof, and is owned, maintained and used for the purposes stated as applicable thereto.

Exclusions

This policy does not apply:

1. to bodily injury, sickness, disease or death of any employee of the insured while engaged in the duties of his employment or to any obligation for which the insured or any company as his insurer may be held liable under any Workmen's Compensation Law;

2. to liability assumed by the insured under any contract or agreement;

3. while, with the knowledge and consent of an insured—
   (a) the aircraft is being operated by an approved pilot who commences a flight in violation of the terms and limitations of his Federal Aviation Agency Pilot Certificate or Medical Certificate;
   (b) the aircraft is being used for any unlawful purpose; or
   (c) the aircraft is being operated in any flying in respect to which a waiver issued by any Government Department or Organization is required whether granted or not, or is being used for closed course racing, spraying, or dusting, seeding, fish stocking, or any form of hunting or acrobatics at an altitude of less than 1,000 feet, unless this policy is specifically endorsed to include such uses;
   (d) The aircraft is in flight unless its Airworthiness Certificate is in full force and effect

4. as respects property damage under coverage B, D and E to injury to or destruction of property owned, rented, occupied or used by or in the care, custody or control of or carried in or on any aircraft of the insured;

5. as respects coverages G, H, I and J to any loss or damage to aircraft insured hereunder (a) due to and confined to wear and tear, deterioration, freezing or mechanical, structural, or electrical breakdown or failure unless such damage is the result of other loss covered by this policy; (b) conversion, embezzlement or secretion by a person in lawful possession or custody of the aircraft, and any damage or loss resulting therefrom until the aircraft is in the actual possession of the insured, (c) damage to tires, unless stolen or coincident with other damage covered by this policy; nor under any circumstances to robes, wearing apparel, flight charts, computers, manuals or any personal effects,

6. to any aircraft insured as a landplane with wheel landing gear hereunder which is converted to a seaplane or skiplane unless previously approved by the company nor to any aircraft if its airworthiness certificate has been converted, during the policy period, to the Restricted or Experimental category;

7. while the aircraft is being operated in flight by any pilot other than the pilot(s) named or described in Item 9 of the declarations unless specifically approved by endorsement attached to this policy.

8. (Noise)
   (a) to loss or damage or any liability of the Insured resulting from, arising out of, or in any way connected with Aircraft Noise, nuisance and/or compensation for the taking, use or acquisition of rights to property or airspace regardless of whether such claims are made directly against the Insured or by virtue of any agreement entered into by or on behalf of the Insured. As used herein "Noise" includes vibration, sonic boom and any phenomena associated therewith,
   (b) the Liability of the Company arising out of any agreement entered into by or on behalf of the Insured and noted by the Company for the purposes of the Policy shall not include any liability in respect of claims excluded by paragraph (a),
   (c) with respect to any provision in the Policy concerning any duty of the Company to investigate or defend claims, such provision shall not apply and the Company shall not be required to defend:
      (i) damages awarded against the Insured and
      (ii) defense fees and expenses incurred by the Insured.

9. (War & Other Perils)
to claims directly or indirectly arising from any one or any combination of any of the following causes or any consequence thereof:
   (a) war, invasion, acts of foreign enemies, hostiles (whether war be declared or not), civil war, rebellion, revolution or insurrection, including malicious acts in furtherance of any of the foregoing;
   (b) any hostile detonation of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force matter;
   (c) any act of one or more persons, whether or not agents of a sovereign power, for political or terrorist purposes and whether the loss or damage resulting therefrom is accidental or intentional;
   (d) confiscation, nationalization, seizure, restraint, detention, appropriation, requisition for title or use by or under the order of any government (whether civil, military or de facto) or public or local authority.

10. (Radioactive Contamination)
   (a) to loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss,
   (b) any legal liability of whatsoever nature directly or indirectly caused or contributed to by or arising from ionizing radiations or contamination by radioactivity from any source whatsoever.

1. Name of Insured: Board of Commissioners of De Kalb County

2. Address: De Kalb County Courthouse, Decatur, Georgia 30032 [ ] INDIVIDUAL(S) [ ] CORPORATION [ ] PARTNERSHIP

3. Policy Period: From 12:01 A.M. [ ] P.M. August 6, 1972 To August 6, 1973
12:01 A.M. Standard Time at the address of the Insured named in Item 2 as Standard Time.

4. Business of Insured: Municipality

5. Aircraft based at — Insurable Interest: [ ] Owner [ ] Lessee [ ] Temporary Custody

6.

LIABILITY COVERAGES	LIMITS OF LIABILITY: Each Person	Each Occurrence	LIABILITY PREMIUMS	HULL COVERAGES IDENTIFIED
A. Bodily Injury—except Passengers	$	$	$	G. All Risks
B. Property Damage	X X X X			H. All Risks not in motion
C. Passenger				I. All Risks not in flight
D. Single Limit—including Passengers*	X X X X			J. As endorsed
E. Single Limit—except Passengers	X X X X			
F. Medical Payment [ ] incl. [ ] excl. Crew				DEDUCTIBLES Each Aircraft Each Loss Except Fire, Theft, Lightning, and Explosion
Endorsement No. (s) 1, AGO			1500.	
* The limit of liability for any one Passenger shall not exceed	$ ----------	Total Liability Premium	$ 1500.	

7. DESCRIPTION OF AIRCRAFT & HULL COVERAGES HEREUNDER

Make and Model	F.A.A. Registration Number	Land Plane Fixed W. Rotary W.	Year Model	Seats Incl. Crew	Hull Coverage	Amount of Insurance	Hull Premiums	Not In Motion	In Motion
Does Not Apply						$	$	$	$

F.A.A. Category: [ ] Normal [ ] Restricted [ ] Utility [ ] Aerobatic — Breach of Warranty Premium — ** Unhangared Deductible

F.A.A. Class: [ ] Standard [ ] Transport [ ] Limited [ ] Experimental — **$ ----- — Hull Premium $ ----- — Policy Premium $ 1500.

deductible applies to each loss from Windstorm, Cyclone, Tornado, Hail, Sleet, Snow or Theft when not regularly hangared at home airport.

8. Uses — Does Not Apply

9. Pilots

10. Exceptions, if any (see below)

No insurer has cancelled, declined to issue or renew any insurance pertaining to an aviation risk for the insured except as stated above. The aircraft described herein are fully owned by the insured unless otherwise stated in Items 4 and 10 above. If a mortgagee, conditional vendor or assignee is named above, loss, if any, under coverages G, H, I or J shall be payable to the named insured and to such additional interest as may appear.

Agent or Broker: Fairfax Underwriters Services, Inc. 127 W. 10th St., Kansas City, Mo.

Countersigned by _____ WESTCHESTER _____

Form 30 Rev. 4-72 (Ga.) — See Reverse side for Policy Definitions — For the Company

BEST COPY AVAILABLE

The limit of liability for sections I, II, III, and IV of this endorsement are as specified in this schedule. The insurance afforded by this endorsement is only with respect to such and so many of the coverages and sections as are indicated thereon by specific premium charge or charges for such coverages and sections.

Liability Coverages	Limits of Liability Each Person	Each Accident
Bodily Injury	$ 100,000.	$ 1,000,000.
Property Damage	X X X X X	$ 1,000,000.
Single Limit – Including Passengers	X X X X X	$

SECTION I PREMISES – OPERATIONS Location of premises and purpose for which premises are used	Part Occupied by Insured	PREMIUMS Bodily Injury	Property Damage
De Kalb-Peachtree Airport Chamblee, Georgia	Entire	$ 250.	$ 250.

SECTION II PRODUCTS (including Completed Operations) - Description	Estimated Sales	Rates per $1,000 of Sales Bodily Inj.	Prop.Damage	ESTIMATED PREMIUMS Bodily Injury	Property Damage
New Aircraft Sales	$	$	$	$	$
Used Aircraft Sales					
Aircraft fuel and lubricants					
Repair and Service					
Parts and Accessories - not installed					

Aggregate Limits – B.I. $_____ P.D. $_____ Single Limit $_____

SECTION III CONTRACTUAL – Identification of Contracts	ESTIMATED PREMIUMS Bodily Injury	Property Damage
	$	$

Aggregate Limits P.D. $

SECTION IV ALTERATIONS – Description	ESTIMATED PREMIUMS Bodily Injury	Property Damage
	$	$

Aggregate Protective Limits P.D. $

SECTION V HANGARKEEPERS LEGAL LIABILITY	PREMIUM Bodily Injury	Property Damage
	X X X	$

LIMITS OF LIABILITY: Any One Aircraft $_____ Any One Loss $_____
Airports Locations Hangars

☐ Including Taxiing ☐ Excluding Taxiing Deductible Each Aircraft, Each Loss $_____

MINIMUM PREMIUMS –	Sect. I	Sect. II	Sect. III	Sect. IV	TOTAL PREMIUMS
Bodily Injury	$ 250.	$	$	$	
Property Damage	$ 250.	$	$	$	$ 250. $ 250.
Single Limit	$	$	$	$	

This endorsement, including all provisions and statements set forth hereon and on the second page hereof, is effective on August 6, 19 72 attached to and forming part of Policy No. 214083

issued by American Home Assurance Company

Name of Insured Board of Commissioners of De Kalb County

Westminster Insurance Mgrs., Inc.
For the Company

No. 26/ 9-65 End. No. 1 Page 1

It is hereby understood and agreed that only as respects the coverages afforded by the various sections of this endorsement:

(1) the words "excluding passengers" shall be deleted from "Bodily Injury Liability - Excluding Passengers" of the insuring agreements of the policy and policy declarations (2) as respects Property Damage Liability, the word "occurrence" wherever used in the policy shall be deleted and the word "accident" substituted therefor. This Policy does not cover any liability imposed upon the insured by any Federal, State or Local Statute relating to the selling, giving or dispensing of intoxicating liquors.

Section I – Premises – Airport Liability

1. The Policy is extended to apply with respect to the ownership, maintenance or use, for the purposes stated in schedule, of the premises designated therein, and all operations of the named insured at or away from the premises which are necessary or incidental to such purposes.

2. Definition of "insured." As respects Section I of this endorsement, the unqualified word "insured" means any partner, executive officer or director of the named insured while acting within the scope of his duties as such.

3. Additional Exclusions – The Policy does not apply under Section I of this endorsement to:

(a) any aircraft owned by, hired by or for, or loaned to the insured or to any aircraft in flight by or in the interest of the insured;

(b) any airmeet, air race, demonstration or show;

(c) any grandstand or group seating structure of any kind where the highest seating surface is in excess of six feet from the ground;

(d) watercraft while away from the premises, or power driven land vehicles and vehicles attached thereto, including loading and unloading thereof, while away from the premises or the ways immediately adjoining;

(e) any elevator other than an elevator which is not operated, maintained or controlled by the insured and is located in a building of which the insured is not the owner, general lessee or sole tenant;

(f) liability with respect to which insurance is or can be afforded under the printed provisions of the Policy or any other section of this endorsement;

(g) operations on or from other premises which are owned, rented or controlled by the insured;

(h) any of the following in so far as any of them occur on or from premises owned by or rented to the named insured and injure or destroy buildings or contents thereof and are not due to fire: (1) the discharge, leakage or overflow of water or steam from plumbing, heating, refrigerating or air-conditioning systems, standpipes for fire hose, or industrial or domestic appliances, or any substance from automatic sprinkler systems, (2) the collapse or fall of tanks or the component parts or supports thereof which form a part of automatic sprinkler systems, or (3) rain or snow admitted directly to the building interior through defective roofs, leaders or spouting, or open or defective doors, windows, skylights, transoms or ventilators;

(i) injury to or destruction of premises alienated by the named insured out of which the accident arises;

(j) liability assumed by the insured under any contract or agreement.

Section II – Products Liability

1. The Policy is extended to apply with respect to:

(a) the handling or use of, the existence, of any condition in or a warranty of goods or products manufactured, sold, handled or distributed by the named insured, other than equipment rented to or located for use of others but not sold, in connection with the operations conducted by the named insured at the premises, if the accident occurs after the insured has relinquished possession thereof to others and away from premises owned, rented or controlled by the insured or on premises for which the classification stated in the company's manual excludes any part of the foregoing;

(b) operations, in connection with operations conducted by the named insured at the premises, if the accident occurs after such operations have been completed or abandoned at the place of occurance thereof and away from premises owned, rented or controlled by the insured, except (a) pick-up and delivery and (b) the existence of tools, uninstalled equipment and abandoned or unused materials; provided, operations shall not be deemed incomplete because improperly or defectively performed or because further operations may be required pursuant to a service or maintenance agreement.

All damages arising out of one prepared or acquired lot of goods or products shall be considered as arising out of one accident. The aggregate limit of liability as set forth in Section II of schedule is the total limit of the Company's liability on account of all accidents which occur during the policy period.

2. Definition of "insured." As respects Section II of this endorsement, the unqualified word "insured" means any partner, executive officer or director of the named insured while acting within the scope of his duties as such.

3. Additional Exclusions. The Policy does not apply under Section II of this endorsement to:

(a) injury to, or destruction including loss of use, of any aircraft or products, manufactured, sold, handled or distributed or work completed by or for the named insured out of which the accident arises;

(b) liability assumed by the insured under any contract or agreement other than a warranty of goods or products.

4. Premium. The earned premium under Section II shall upon termination of the Policy be computed in accordance with the Company's rules, rates, rating plans, premiums and minimum premiums applicable to this insurance. If the earned premium thus computed exceeds the estimated premium paid, the named insured shall pay the excess to the Company; if less, the Company shall return to the named insured the unearned portion paid by such insured.

5. When used as a premium basis, the word "sales" shall mean the gross amount of money charged by the named insured or by others trading under his name for all goods and products sold or distributed during the policy period, and charged during the policy period for installation, servicing or repair, and includes taxes, other than taxes which the named insured and such others collect as a separate item and remit directly to a governmental division.

6. Inspection and Audit. The Company shall be permitted to inspect the insured premises, operations, and aircraft and to examine and audit the insured's books and records at any time during the Policy period and any extension thereof and within one year after the final termination of this Policy, as far as they relate to the premium basis or the subject matter of this insurance.

Section III – Contractual Liability

1. The coverage provided by the Policy is extended to include liability assumed by the named insured under such contracts as are itemized under Section III of the schedule of this endorsement, subject to Policy Terms, Conditions, Limitations and Exclusions.

2. Additional Exclusions. The Policy does not apply under Section III of this endorsement to:

(a) liability assumed under any contract or agreement not itemized in the schedule;

(b) any of the following in so far as any of them occur on or from premises owned by or rented to the named insured and injure or destroy buildings or contents thereof and are not due to fire: (1) the discharge leakage or overflow of water or steam from plumbing, heating, refrigerating or air-conditioning systems, standpipes for fire hose, or industrial or domestic appliances, or any substance from automatic sprinkler systems, (2) the collapse or fall of tanks or the component parts or supports thereof which form a part of automatic sprinkler systems, or (3) rain or snow admitted directly to the building interior through defective roofs, leaders or spouting, or open or defective doors, windows, skylights, transoms or ventilators;

(c) injury to or destruction of premises alienated by the named insured out of which the accident arises;

(d) injury to, or destruction of any aircraft or products manufactured, sold, handled or distributed or work completed by or for the named insured out of which the accident arises.

The aggregate limit of liability set forth in Section III of the schedule is the total limit of the Company's liability on account of all damages arising out of injury to or destruction of property with respect to each contract.

continued on reverse side

No. 26-2 Rev. 6-1970 End. No. 1 Page 2

issued to Board of Commissioners of De Kalb County

This endorsement, effective August 6, 1972 (12:01 A.M., standard time, at address of the insured) forms a part of policy No. 214033

In Consideration of ☐ Additional Premium / ☐ Return Premium \ of $ Nil for days % is of $

It is hereby Understood and Agreed that:

1. The premium for the policy is due and payable as follows:

August 6, 1972	$500.
August 6, 1973	$500.
August 6, 1974	$500.

2. Waiver of Governmental Immunity

"It is agreed that the company waives any right to deny liability under the policy or to refuse payment within the limits thereof by reason of the non-liability of the insured political subdivision for the wrongful or negligent acts of its agents and employees and its immunity from suit as an agency of the State performing governmental function."

The provisions of the following pages, if any, are a part of this endorsement. All other terms and conditions of this policy remain unchanged.

Westminster Insurance Managers, Inc.

For the Company

NO. 8-6-69

End. No. 2 Page 1

issued to ...d Commissioners of De Kalb County

This endorsement, effective August 6, 1972 (12:01 A.M., standard time, at address of the insured) forms a part of policy No. 21408?

In Consideration of ☐ Additional Premium / ☐ Return Premium \ of $ _____ for days % is of $

It is hereby Understood and Agreed that:

ANNUAL REVIEW

This policy is subject to automatic notice of cancellation to take effect upon anniversary date (s).

The provisions of the following pages, if any, are a part of this endorsement. All other terms and conditions of this policy remain unchanged.

Westminster Insurance Managers, Inc.

For the Company

NO. 8-6-69

End. No. 2 Page 2

Conditions

1. Definitions:

(a) **Aircraft** wherever used in this policy shall mean the aircraft described herein including engines, propellers, operating and navigation instruments and radio equipment attached or usually attached thereto including parts detached and not replaced by other similar parts. When two or more aircraft are insured hereunder, the terms of this policy shall apply separately to each.

(b) **In Flight** wherever used in this policy shall mean the period from the time the aircraft (other than a watercraft) moves forward in taking off or in attempting to take off for an intended flight, while in the air, and until the aircraft completes its landing and taxiing run after contact with the land or (when equipped with flotation gear) the water. A watercraft shall be deemed to be "in flight" when the rotors are in motion as a result of engine power, the momentum generated therefrom or navigation.

(c) **In Motion** means all times when the aircraft is "in flight" and in addition, whenever the aircraft is moving under its own power or the momentum generated thereby.

(d) **Fire** wherever used in this policy shall mean fire, lightning, explosion, self-ignition unless fire or explosion is caused directly or indirectly by collision of the aircraft with the ground, water or any object.

(e) **Theft** wherever used in this policy shall mean theft, robbery, larceny or pilferage including damage done by thieves.

(f) **Pleasure and Business** is defined as personal, pleasure, family and business uses, excluding any operation for which a charge is made except that shared expenses limited to fuel costs and storage fees for a particular flight shall not be deemed a charge.

(g) **Industrial Aid** is defined as the transportation of officials, employees, guests, merchandise and all uses enumerated in the definition of Pleasure and Business but excluding any operation for which a charge is made except that shared expenses limited to fuel costs and storage fees for a particular flight shall not be deemed a charge.

(h) **Instruction and Rental** is defined as used principally in the business of the insured, including student instruction, rental to others and Pleasure and Business purposes but excluding passenger carrying for hire.

(i) **Limited Commercial** is defined as used principally in the business of the insured including passenger or freight carrying for hire and Pleasure and Business uses, but excluding instruction to or rental to others.

(j) **Commercial** includes all uses enumerated in the definitions of Instruction and Rental and Limited Commercial.

(k) **Passenger** shall mean any person or persons while in, entering or leaving the aircraft for the purpose of flight other than the pilot, co-pilot, members of the crew, employees and officials while in the course of their employment by the insured.

(l) **Occurrence** means an accident, or a continuous or repeated exposure to conditions, which results in injury during the policy period, provided the injury is accidently caused. All damages arising out of such exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

(m) **Injury** as respects any person, means bodily injury, sickness including mental anguish, disease or death resulting therefrom; and as respects any property, means injury to or destruction of the property including loss of use thereof.

(n) **Assault and Battery** shall be deemed an occurrence but, when committed by or at the direction of the insured, it shall not be deemed an occurrence unless committed for the purpose of preventing dangerous interference with the operation of the aircraft.

(o) **Federal Aviation Agency** or "F.A.A." shall also include the Civil Aeronautics Board or the duly constituted National Authority having jurisdiction over civil aviation in any recognized country.

2. Notice of Occurrence, Injury, Damage or Claim (Coverages A, B, C, D, E and F). When an occurrence, injury, damage or claim takes place, written notice shall be given by or on behalf of the insured to the company or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured and also reasonably obtainable information respecting the time, place and circumstances of the occurrence, the names and addresses of the injured and of available witnesses.

3. Notice of Claim or Suit (Coverages A, B, C, D, E and F). If claim is made or suit brought against the insured, the insured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

4. Limits of Liability (Coverages A, B, C, D, E and F). The limit of liability stated in the declarations is the limit of the company's liability for all damages arising out of the one occurrence.

The limit of liability stated in the declarations for coverages A and C as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by one person in any one occurrence; the limit of such liability stated in the declarations as applicable to "each occurrence" is, subject to the above provision respecting each person, the total limit of the company's liability for all damages including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom sustained by two or more persons in any one occurrence. The inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

5. Assistance and Cooperation of the Insured. The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expenses other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

6. Action Against Company. No action shall lie against the company under coverages A, B, C, D and E, unless as a condition precedent thereto, the insured shall have fully complied with all of the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement between the insured, the claimant and the company. Any person or his legal representative who has secured such judgment or written agreement shall thereafter be entitled to recover under the terms of this policy in the same manner and to the same extent as the insured. Nothing contained in this policy shall give any person or organization any right to join the company as a co-defendant in any action against the insured to determine the insured's liability.

Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations hereunder.

Under coverages G, H, I and J payment for loss may not be required and no action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy and until thirty days after proof of loss is filed and the amount of loss is determined as provided in this policy, and unless such action is commenced within twelve (12) months next after the happening of the loss.

7. Financial Responsibility Laws (Coverages A, B, C, D and E). Such insurance as is afforded by this policy for bodily injury liability or property damage liability shall comply with the provisions of any financial responsibility law of any State or Province which shall be applicable to aircraft with respect to any such liability arising out of the ownership, maintenance or use of the aircraft during the policy period, to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

8. Medical Reports; Proof and Payment of Claim (Coverage F). As soon as practicable the injured person or someone on his behalf shall give to the company written proof of claim, under oath if required, and shall after each request from the company, execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require.

The company may pay the injured person or any person or organization rendering the services and such payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute admission of liability of the insured or, except hereunder, of the company.

9. Other Insurance. If the insured has other insurance against a loss covered by this policy the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, the insurance under Insuring Agreements V and VI shall be excess insurance over any other valid and collectible insurance available to the insured, either as an insured under a policy applicable with respect to the aircraft or otherwise against a loss covered under either or both of said Insuring Agreements.

10. Insured's Duties When Loss Occurs (Coverages G, H, I and J). When loss occurs, the insured shall: (a) protect the aircraft, provided the insured is able to do so, whether or not the loss is covered by this policy and any further loss due to the insured's failure to protect shall not be recoverable under this policy; however, where the loss or damage suffered constitutes a claim under this policy then all reasonable expense incurred in affording such protection shall be deemed a loss under this policy; (b) give notice thereof as soon as practicable to the company or any of its authorized agents and also, in event of theft, larceny, robbery or pilferage, to the police but shall not, except at his own cost, offer or pay any reward for recovery of the aircraft (c) file proof of loss with the company within sixty days after loss, unless such time is extended in writing by the company, in the form of a sworn statement of the insured setting forth the interest of the insured and of all others in the property affected, any encumbrances thereon, the actual cash value hereof at time of loss, the amount, place, time and cause of such loss, and the description and amounts of all other insurance covering such property.

Upon the company's request, the insured shall exhibit the damaged property to the company and submit to examination under oath by anyone designated by the company, subscribe the same and produce for the company's examination all pertinent records and sales invoices, or certified copies if originals be lost, permitting copies thereof to be made, all at such reasonable times and places as the company shall designate.

Coverage B — Property Damage [illegible] property of others.

Coverage C — Passenger [illegible]

Coverage D — Single Limit [illegible] property damage.

Coverage E — Single Limit [illegible] passenger caused by an [illegible] the aircraft.

Coverage F — Medical Coverage [illegible] one year from the [illegible]

amendment, or other crew member of the aircraft, unless "crew" is expressly specified as included in the Declarations.

Hull Coverages — To pay for direct loss of or damage to the aircraft, subject to the exclusions, conditions and other terms of this policy when caused by:

Coverage G — All Risks of Physical Loss or Damage to the Aircraft. The aircraft shall be presumed lost in flight if it disappears after take-off and is not located nor its whereabouts reported within sixty days thereafter.

Coverage H — All Risks of physical loss or damage to the aircraft while not in motion.

Coverage I — All Risks of physical loss or damage to the aircraft while not in flight.

Coverage J — As endorsed hereon.

11. Limit of Liability; No Abandonment (Coverages G, H, I and J). The limit of the company's liability for loss shall not exceed the actual cash value of the aircraft at the time of loss nor what it would then cost to repair or replace the aircraft or parts thereof with other of like kind and quality nor shall it exceed: (a) in the case of a total loss, the amount of insurance on any aircraft the subject of a claim; (b) in the case of partial loss when repairs are made by the insured, the actual cost of any parts or materials necessary to effect repairs or replacement plus 150% of the actual cost to the insured of labor exclusive of overtime labor and overhead; when the repairs are made by other than the insured, the actual costs as evidenced by bills rendered to the insured less any discount granted to the insured, excluding cost of overtime unless previously agreed to by the company. In no event shall the liability of the company for partial loss exceed the amount for which the company would be liable were the loss payable as a total loss.

In the event of either a total loss or a partial loss, there can be no abandonment of any property to the company however, any salvage remaining shall inure to the benefit of the company.

12. Deductible (Coverages G, H, I and J). The amount of the deductible specified in the declarations shall be deducted from the amount otherwise payable under this policy.

The "In Motion Deductible" as stated in the Declarations shall apply to each loss occurring while the aircraft is in motion.

The "Not in Motion Deductible" as stated in the Declarations shall apply to each loss occurring while the aircraft is not in motion, except no deductible shall apply to any such loss caused by fire, explosion, lightning, theft, except theft of or pilferage of an aircraft not regularly hangared at its home airport, or an accident to the conveyance in or on which the aircraft while dismantled is being transported.

13. Appraisal (Coverages G, H, I and J). If the insured and the company fail to agree as to the amount of loss, each shall, on the written demand of either, made within sixty days after receipt of proof of loss by the company, select a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place. The appraisers shall first select a competent and disinterested umpire, and failing for fifteen days to agree upon such umpire, then, on the request of the insured or the company, such umpire shall be selected by a judge of a court of record in the county and state in which such appraisal is pending. The appraisers shall then appraise the loss, stating separately the actual cash value at the time of loss and the amount of loss, and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The insured and the company shall each pay his or its chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

The company shall not be held to have waived any of its rights by any act relating to appraisal.

14. Cost of Transportation (Coverages G, H, I and J). The cost of transporting new or damaged parts or of transporting the damaged aircraft to the place of repair and return to place of accident, or home airport, whichever be the nearer, shall be limited to the least expensive method of reasonable transportation.

In case of loss arising outside the continental limits of the United States of America, the limit of the company's liability for salvaging the aircraft including the transportation thereof and/or the transportation of new or damaged parts to the place of repair and return to the place of accident or home airport, whichever be the nearer, shall be limited to the least expensive methods of reasonable transportation and in no event shall exceed 15% of the claim otherwise payable.

15. Automatic Reinstatement (Coverages G, H, I and J). In the event of loss, whether or not covered by this policy, the amount of insurance in respect to any aircraft shall be reduced as of the time and date of loss by the amount of such loss and such reduced value shall continue until repairs are commenced when the amount of insurance shall automatically be increased by the value of the completed repairs until the Amount of Insurance is fully reinstated or the policy has expired.

16. Subrogation. In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor against any person and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights.

17. Changes. No notice to any agent or knowledge possessed by any agent or by any other person shall be held to effect a waiver or change in any part of this policy nor estop the company from asserting any right under the terms of this policy, nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part hereof signed by a duly authorized official of the company.

18. Assignment. No assignment of interest under this policy shall bind the company until its consent is endorsed hereon; if, however, the named insured shall die or be adjudged bankrupt or insolvent within the policy period, this policy, unless cancelled, shall, if written notice be given to the company within thirty days after the date of such death or adjudication, cover any person having proper temporary custody of the aircraft or the named insured's legal representatives as the named insured.

19. Cancellation. This policy may be cancelled by the named insured by mailing written notice to the company, stating when thereafter such cancellation shall be effective. This policy may be cancelled by the company by mailing written notice to the named insured at the address shown in this policy stating when not less than ten days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice and the insurance under this policy shall end on the effective date and hour of cancellation stated in the notice. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing. If the named insured cancels, earned premiums shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premiums shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected, and, if not then made shall be made as soon as practicable after cancellation becomes effective. The company's check or the check of its representative mailed or delivered as aforesaid shall be sufficient tender of any refund of premium due to the named insured. The company shall not be liable for any return premium in respect to an aircraft on which a total loss has been paid.

20. Fraud or Misrepresentation. This policy shall be void if the insured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof or in case of any fraud, attempted fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

21. Terms of Policy Conformed to Statute. Terms of this policy which are in conflict with the statutes of the state or province (Canada) wherein this policy is issued are hereby amended to conform to such statutes.

It is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the insured, will submit to the jurisdiction of any court of competent jurisdiction within the United States or Canada and will comply with all matters arising hereunder as shall be determined in accordance with the law and practice of such court.

Should the named insured desire to institute suit against the Company in connection with such insurance as is afforded by this policy, the Company will, upon being so advised, appoint a person upon whom process may be served in the named insured's state or province provided there is not already an official so designated, and will also furnish the named insured with the name and address of such person.

22. Declarations. By acceptance of this policy the insured agrees that the statements in the application and declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

IN WITNESS WHEREOF, the company has executed and attested these presents, but this policy shall not be valid unless countersigned by a duly authorized agent of the company.

AMERICAN HOME ASSURANCE COMPANY

Max Wellmer
Secretary

Thomas R. Sewell
President

KANSAS AMENDMENT — In compliance with the laws of Kansas if this policy is issued or delivered in the State of Kansas: (a) Condition 6—Action against Company—is amended to provide that the time limit for commencing suit or action shall be five years rather than twelve months as stipulated therein. (b) Condition 13—Subrogation—shall not apply with respect to payment of any claim under Coverage F—Medical Payments.

MICHIGAN—AMENDMENT OF CANCELLATION CONDITION—If this policy is issued or delivered in the State of Michigan it is agreed that the first four sentences of the Cancellation Condition, paragraph 19, are amended to read as follows:

This policy may be cancelled by the insured named in Item 1 of the declarations by surrender thereof to the company or any of its authorized agents or by mailing to the company written notice stating when thereafter the cancellation shall be effective. This policy may be cancelled by the company by mailing to the insured named in Item 1 of the declarations at his address last known to the company or its authorized agent written notice stating when not less than ten days thereafter such cancellation shall be effective. The time of the surrender or the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by such insured or by the company shall be equivalent to mailing.

WISCONSIN STATUTORY AMENDMENT—In compliance with the laws of the State of Wisconsin, Paragraph 3 of the EXCLUSIONS is deleted and the following substituted in lieu thereof:

3. While with the knowledge and consent of the insured
   (a) The aircraft is being used for any unlawful purpose; or
   (b) The aircraft is being used for closed course racing, spraying, or dusting, seeding, fish stocking, or any form of hunting or acrobatics or on altitude of less than 1,000 feet, unless this policy is specifically endorsed to include such use.

No. 1 Rev 7/71

(Caption omitted in printing)

Filed: Feb. 15, 1974

MOTION TO DISMISS THE AMENDED COMPLAINT

Now comes DEKALB COUNTY, GEORGIA, one of the Defendants in the above styled action, and moves the Court, pursuant to Rule 12, Federal Rules of Civil Procedure, for the dismissal of the amended Complaint, showing the Court as follows:

1.

The amended Complaint fails to state a claim or cause of action against DeKalb County, Georgia, upon which relief can be granted.

2.

None of the claims asserted against Defendant, DeKalb County, Georgia, can be granted owing to its constitutional governmental immunity which has not been waived, either expressly or impliedly.

[249] 3.

More particularly, DeKalb County, Georgia, shows the Court that the amended Complaint fails to state a claim upon which relief can be granted in the following respects:

(a) In Georgia, no direct action lies against the insurer of one of the Defendants;

(b) Plaintiffs cannot recover against DeKalb County, Georgia, on a theory of negligence as a matter of law owing to said Defendant's constitutional governmental

immunity from suit which has not been waived, either expressly or impliedly;

(c) The statutes, ordinances, and regulations recited in the amended Complaint do not create in Plaintiffs a cause of action against this Defendant;

(d) DeKalb County, Georgia, maintains the DeKalb-Peachtree Airport as a governmental function and, as such, is constitutionally immune from suit by these Plaintiffs.

WHEREFORE, Defendant, DeKalb County, Georgia prays that its Motion be inquired into and sustained and that the amended Complaint be dismissed as to it.

(Signature and Certificate of Service omitted in printing)

[251]

(Caption omitted in printing)

Filed: Feb. 15, 1974

MOTION TO STRIKE ALLEGATIONS FROM THE AMENDED COMPLAINT

Now comes DeKalb County, Georgia, one of the Defendants in the above styled action, and moves the Court, pursuant to Rule 12, Federal Rules of Civil Procedure, to strike certain allegations from the amended Complaint, showing the Court as follows:

1.

Defendant moves to strike Paragraphs 1 (e), 34, and 55 (b) from the Plaintiffs' amended Complaint on the ground that said Paragraphs fail to state a claim upon which relief can be granted in that in Georgia, no direct action lies against the insurer of one of the Defendants.

2.

Defendant moves to strike Paragraphs 51 and 52 from Plaintiffs' amended Complaint on the ground that said Paragraphs fail to state a claim upon which relief can be granted in that the statutes, ordinances, and regulations recited in said Paragraphs do not create in Plaintiffs a cause of action against this Defendant.

[252]

3.

Defendant moves to strike Paragraphs 53, 54, the remaining allegations of 55, and 56 from the Plaintiffs' amended Complaint on the ground that said Paragraphs fail to state a claim upon which relief can be granted in that a County in Georgia is not subject to suit based upon

[252]

negligence owing to its constitutional governmental immunity which has not been waived, either expressly or impliedly.

WHEREFORE, Defendant, DeKalb County, Georgia, prays that its Motion be inquired into and sustained.

(Signature and Certificate of Service omitted in printing)

(Caption omitted in printing)

Filed: Feb. 15, 1974

ANSWER OF DEKALB COUNTY, GEORGIA TO FIRST AMENDED COMPLAINT OF PLAINTIFFS

Comes now DeKalb County, Georgia and responds to the first amendment to Complaint of Plaintiffs as follows:

1.

DeKalb County, Georgia is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Subparagraph (e) of Paragraph 4 of the Complaint of Plaintiffs as amended.

2.

Responding to Paragraph 34 of the Complaint of Plaintiffs as amended, DeKalb County, Georgia admits that American Home Assurance Company issued a policy of liability insurance to DeKalb County, Georgia and further avers that the terms, limitations and conditions of said policy of insurance are contained in Exhibit "B" of the Complaint of Plaintiffs as amended. Further responding, these Defendants aver that any policy of insurance purchased by DeKalb County is a matter that concerns only DeKalb County and the American Home Assurance Company and any "waiver of governmental immunity" language contained in said policy of insurance does not in anywise prevent DeKalb County, Georgia from [237] raising the question of the immunity of the County to suit.

3.

DeKalb County, Georgia admits the allegations contained in Paragraphs 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44 of the Complaint of Plaintiffs as amended.

4.

DeKalb County, Georgia is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 45, 46, 47, 48, 49, and 50 of the Complaint of Plaintiffs as amended.

5.

DeKalb County, Georgia denies the allegations contained in Paragraphs 52, 53, 54, 56, and 57 of the Complaint of Plaintiffs as amended.

6.

DeKalb County, Georgia responds to Paragraph 51 of the Complaint of Plaintiffs as amended as follows:

(a) Georgia Code Section 11-402 contains the following definition:

> "(2) "Airport Hazard" means any overhead power line which interferes with radio communication between the publicly-owned aircraft approaching or leaving same, or any structure or tree which obstructs the aerial approaches of such an airport or is otherwise hazardous to its use for landing or taking off."

The above definition is contained in the "Airport Zoning Act".

(b) DeKalb County, Georgia admits the "Airport Zoning Act" contains language that an airport hazard endangers the lives and property of users of the airport and is therefore not in the interest of the public health,

[238]

public safety or general welfare. Responding further, Georgia Code Section 11-403 refers to "Airport Hazard" as defined in the "Airport Zoning Act".

[238]

(c) DeKalb County, Georgia admits Subparagraph (c) and admits Georgia Code Section 11-9902 declares that the violation of an airport zoning regulation as set out in Chapter 11-4 of the Code of Georgia, shall constitute a misdemeanor.

(d) These Defendants aver the Airport Zoning Resolution defines "Airport Hazard" as follows:

"*Section 2. Definitions.* (2) "Airport Hazard" means any structure or tree or use of land which obstructs the air space required for the flight of aircraft in landing or taking off at the airport or is otherwise hazardous to such landing or taking off of aircraft."

(e) DeKalb County denies the allegations contained in Subparagraph (e) of Paragraph 51 of the amended Complaint.

(f) DeKalb County, Georgia denies the allegations contained in Subparagraph (f) of Paragraph 51 of the Complaint as amended.

(g) DeKalb County, Georgia, denies the allegations contained in Subparagraph (g) of Paragraph 51 of the Complaint of Plaintiffs as amended.

(h) DeKalb County, Georgia denies the allegations contained in Subparagraph (h) of Paragraph 51 of the Complaint as amended.

Further responding to Paragraph 51 of the Complaint as amended, DeKalb County, Georgia avers that it is not required by law to zone land for use by the County when that land is owned by the County.

[239]

7.

DeKalb County responds to Paragraph 55 of the Complaint of Plaintiffs as amended as follows:

(a) The allegations contained in Subparagraph (a) are denied.

(b) Responding to Subparagraph (b), DeKalb County admits the policy of insurance was issued by American Home Assurance Company to DeKalb County and the terms, limitations and conditions thereof are contained within the policy attached to the Complaint of [239] Plaintiffs as amended.

(c) The allegations contained in Subparagraph (c) of Paragraph 55 are denied.

WHEREFORE, Having fully answered, the Complaint of Plaintiffs as amended, DeKalb County, Georgia prays it be hence discharged without liability and demands trial by jury.

(Signature and Certificate of Service omitted in printing)

[283]

(Caption omitted in printing)

Filed: Apr. 24, 1974

PLAINTIFFS' SECOND AMENDMENT TO COMPLAINT

Plaintiffs amend their Complaint heretofore filed in said case by adding a new paragraph to be numbered 30(a) and to read as follows:

"30(a).

Defendants DEKALB COUNTY, GEORGIA, and COUNTY COMMISSIONERS, their predecessors in office, and their agents, servants and employees, were guilty of maintaining a nuisance which proximately contributed to the deaths of RICHARDSON F. MIREE and LUCY ESTES MIREE as follows:

(a) In maintaining a garbage dump on which was dumped untreated garbage, trash, refuse, offal, filth and other waste materials on DeKalb-Peachtree Airport property;

[284]

(b) In intentionally and wantonly continuing to utilize airport property for a garbage dump after receiving notice of the bird hazard.

(Signature omitted in printing)

[318]

(Caption omitted in printing)

[317] Filed: May 14, 1974

ANSWER OF DEKALB COUNTY, GEORGIA TO SECOND AMENDED COMPLAINT OF PLAINTIFFS

Now comes DeKalb County, Georgia, and responds to the second amendment to the Complaint of Plaintiff as follows:

1.

Responding to Paragraph 30 (a) of the Complaint of Plaintiffs, this Defendant denies each and every allegation contained within the introductory paragraph designated 30 (a) of the Complaint of Plaintiffs.

2.

Responding to Subparagraph (a) of Paragraph 30 (a) of the Complaint of Plaintiffs, this Defendant admits that it maintained a sanitary landfill on the property contiguous with the DeKalb-Peachtree Airport. Responding further, this Defendant denies each and every remaining allegation contained within Subparagraph (a) of Paragraph 30 (a) of the Complaint of Plaintiffs.

[318]

Responding to Subparagraph (b) of Paragraph 30 (a) of the Complaint of Plaintiffs, this Defendant denies each and every allegation contained within Subparagraph (b) of Paragraph 30 (a) of the Complaint of Plaintiffs.

WHEREFORE, having fully answered the Complaint of Plaintiffs as amended, DeKalb County, Georgia, prays

[318]

it be hence discharged without liability and demands trial by Jury.

(Signature and Certificate of Service omitted in printing)

[321]

(Caption omitted in printing)

[320] Filed: May 14, 1974

MOTION TO DISMISS AND/OR MOTION TO STRIKE ALLEGATIONS FROM THE SECOND AMENDED COMPLAINT OF PLAINTIFFS

Now comes DeKalb County, Georgia, one of the Defendants in the above-styled action, and moves the Court, pursuant to Rule 12, Federal Rules of Civil Procedure, to dismiss and/or to strike the allegations contained within the second amended Complaint of Plaintiffs, showing the Court as follows:

1.

Defendant moves to dismiss and/or strike Paragraph 30 (a), and the Subparagraphs contained therein, from Plaintiffs' Complaint on the ground that said Paragraphs fail to state a claim upon which relief can be granted in that in Georgia, an action will not lie against a County for the alleged creation and/or maintenance of a nuisance.

WHEREFORE, Defendant DeKalb County, Georgia prays that [321] this Motion to Dismiss and/or Strike be inquired into and sustained.

(Signature and Certificate of Service omitted in printing)

[Filed in Clerk's Office, July 3, 1974,
Ben H. Carter, Clerk; By: P.J.E., Deputy Clerk.]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GEORGE HENSON MIREE, *et al.*,
Plaintiffs,
v.
UNITED STATES OF AMERICA, *et al.*,
Defendants.
} CIVIL ACTION NO. 19293

—AND—

JUDITH ANITA PHILLIPS,
Plaintiff,
v.
UNITED STATES OF AMERICA, *et al.*,
Defendants.
} CIVIL ACTION NO. 19412

—AND—

FIREMAN'S FUND INSURANCE COMPANY,
Plaintiff,
v.
UNITED STATES OF AMERICA, *et al.*,
Defendants.
} CIVIL ACTION NO. C-74-24-A

—AND—

WILLIAM MICHAEL FIELDS,
Plaintiff,
v.
DEKALB COUNTY, GEORGIA, *et al.*,
Defendants.
} CIVIL ACTION NO. C-74-291-A

—AND—

MRS. PEARLIE CHAISSON,
Plaintiff,
v.
SOUTHEAST MACHINERY, INC.,
Defendant.
} CIVIL ACTION NO. C-74-915-A

MOTION OF SOUTHEAST MACHINERY, INC., MACHINERY BUYERS CORP. AND FIREMAN'S FUND INSURANCE COMPANY TO VACATE, SET ASIDE, ALTER AND AMEND THE ORDERS ENTERED ON JUNE 27, 1974, AND FOR RECONSIDERATION, REHEARING AND NEW TRIAL

---

[344]

FOREWORD

Inasmuch as all five of the above-entitled cases involve common questions of law and fact and inasmuch as all five of the June 27, 1974 orders entered by the Court in these cases are in pertinent part substantially identical, Southeast Machinery, Inc. and Machinery Buyers Corp. and Fireman's Fund Insurance Company (hereinafter

sometimes referred to simply as "movants") are filing this single motion in each of these cases. (Duplicate originals of this motion are being filed separately in each case, so that the dockets and records of the Court will be complete.)

THE MOTIONS

Come now movants and respectfully move the Court as follows:

(1) In Civil Action No. C-74-24-A, and pursuant to Rules 59 and 60, F.R.C.P., Fireman's Fund Insurance Company hereby respectfully moves the Court to vacate, set aside, amend and alter that portion of the June 27, 1974 order entered in said case which upheld DeKalb County's sovereign immunity defense, and which granted and sustained DeKalb County's motion to dismiss it as a defendant, and which dismissed DeKalb County and the DeKalb County Commissioners as defendants, and Fireman's Fund Insurance Company further hereby moves the Court to enter a new order in said case overruling and denying the motion to dismiss of DeKalb County and the DeKalb County Commissioners.

(2) In Civil Action No. C-74-24-A, and pursuant to Rules 59 and 60, F.R.C.P., Fireman's Fund Insurance Company hereby respectfully moves the Court for reconsideration, rehearing and new trial both with respect to the motion to dismiss of DeKalb County and the DeKalb County Commissioners and with respect to the June 27, 1974 order granting the motion to dismiss of DeKalb [345] County and the DeKalb County Commissioners, and after reconsideration, rehearing and new trial, to enter a new order in said case overruling and denying the motion to dismiss of DeKalb County and the DeKalb County Commissioners.

(3) In Civil Action No. C-74-915-A, and pursuant to Rules 59 and 60, F.R.C.P., Southeast Machinery, Inc. hereby respectfully moves the Court to vacate, set aside, amend and alter the June 27, 1974 order entered in said case, which order upheld DeKalb County's sovereign immunity defense, and which order granted and sustained DeKalb County's motion to dismiss, and which order dismissed DeKalb County and the DeKalb County Commissioners as third-party defendants, and Southeast Machinery, Inc. further hereby moves the Court to enter a new order in said case overruling and denying the motion to dismiss of DeKalb County and the DeKalb County Commissioners.

(4) In Civil Action No. C-74-915-A, and pursuant to Rules 59 and 60, F.R.C.P., Southeast Machinery, Inc. hereby respectfully moves the Court for reconsideration, rehearing and new trial both with respect to the motion to dismiss of DeKalb County and the DeKalb County Commissioners and with respect to the June 27, 1974 order entered in said case granting and sustaining the motion to dismiss of DeKalb County and the DeKalb County Commissioners, and after reconsideration, rehearing and new trial, to enter a new order in said case overruling and denying the motion to dismiss of DeKalb County and the DeKalb County Commissioners.

(5) In Civil Action Nos. 19293, 19412 and C-74-291-A, and pursuant to Rules 59 and 60, F.R.C.P., Southeast Machinery, Inc. and Machinery Buyers Corp. hereby respectfully move the Court to vacate, set aside, alter and amend the orders entered on June 27, 1974 in said cases, which orders granted and sustained the motions to dismiss of DeKalb County and the DeKalb County Commissioners, and said movants further hereby move the Court for reconsideration, rehearing and new trial both with respect to said June 27, 1974 orders and with respect to the motions to [346] dismiss of DeKalb

County and the DeKalb County Commissioners, and after reconsideration, rehearing and new trial, to enter new orders overruling and denying the motions to dismiss of DeKalb County and the DeKalb County Commissioners.

(6) In the alternative, and pursuant to 28 U.S.C. §1292(b) and Rules 59 and 60, F.R.C.P., movants hereby respectfully move the Court to enter orders in each of these cases altering, amending and modifying the June 27, 1974 orders entered in each of these cases, so as to provide with respect to the orders granting the motions to dismiss of DeKalb County and the DeKalb County Commissioners that there is a substantial ground for difference of opinion and that an immediate appeal from such orders may materially advance the ultimate termination of the litigation, or so as otherwise to provide the affected parties with the right to an immediate appeal from the orders dismissing DeKalb County and the DeKalb County Commissioners as defendants (particularly with respect to the dismissal orders in Civil Action Nos. C-74-24-A and C-74-915-A).

THE GROUNDS

As grounds for these motions, movants respectfully show:

(a) That the said June 27 dismissal orders are erroneous and incorrect as a matter of law, as is set forth more fully in the brief filed concurrently with these motions;

(b) That in reaching its erroneous decisions concerning sovereign immunity the Court overlooked controlling principles of law and misapplied the law of Georgia, as is set forth more fully in the brief filed concurrently herewith; and

(c) Alternatively, that the interests of efficient ad-

ministration of justice would be best served by providing the affected parties with the right to an immediate appeal from the [347] June 27 dismissal orders, as is set forth more fully in the brief filed concurrently herewith.

WHEREFORE, movants respectfully pray that these motions be inquired into and that the relief requested be granted in each of these cases.

Respectfully submitted,

/s/ J. ARTHUR MOZLEY

J. ARTHUR MOZLEY
Attorney for Movants

OF COUNSEL:

SMITH, COHEN, RINGEL, KOHLER,
MARTIN & LOWE
2400 First National Bank Tower
Atlanta, Georgia 30303

658-1200

(Certificate of Service omitted in printing)

PART B
APPENDIX
IN
No. 76-659

JUDITH ANITA PHILLIPS, *et al.*,
Petitioners,

v.

DEKALB COUNTY, GEORGIA, *et al.*,
Respondents.

CIVIL DOCKET

UNITED STATES DISTRICT COURT

D. C. Form No. 104 Rev.

Jury demand date:
By Plff: 11-28-73 & DeKalb Co. 1-21-74
By 3rd. pty. deft. 5-15-74

TITLE OF CASE	ATTORNEYS
JUDITH ANITA PHILLIPS, widow of David Emanuel Phillips, deceased -vs- UNITED STATES OF AMERICA -and- (6/27/74) DeKALB COUNTY, GEORGIA " [illegible]	For plaintiff: A. Russell Blank Egan & [illegible] 2417 First National Bank Tower Atlanta, Georgia 30303 (658-9070)
	For defendant: Harvey, Willard & Elliott Wendell K. Willard 125 Trinity Place Decatur, Georgia and Long, Weinberg, Ansley & Wheeler Meade Burns & F. Clay Bush 3000 The Equitable Bldg. Atlanta, Ga. 30303 (522-5303) (for DeKalb County)
	John W. Stokes, Jr. U.S. Atty. William D. Mallard, Jr. George H. Fleming U.S. Dept. of Justice Washington, D.C. 20530 202 739-46[illegible]

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed 11-28-73	Clerk	15 00				
J.S. 6 mailed	Marshal B/0774	13 20				
Basis of Action: Wrongful death of husband due to crash of aircraft.	Docket fee					
Action arose at:	Witness fees					
	Depositions					

BEST COPY AVAILABLE

UNITED STATES OF AMERICA and DEKALB COUNTY, GEORGIA — SHEET #2 — C.A. 1911

D. C. 110A Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Ord.

ADDITIONAL COUNSEL

George M. Fleming
Torts Section
Civil Division
U. S. Department of Justice
902 Safeway Building
Washington, D. C. 20530
For: United States

[illegible] H. Willard
Harvey, Willard & Elliott
125 Trinity Place
Decatur, Georgia (377-3051)
and
Long, Weinberg, Ansley & Wheeler
3000 The Equitable Building
Atlanta, Georgia 30302 (525-5903)
(for DeKalb County, Georgia)

J. Arthur Mozley
Smith, Cohen, Ringel, Kohler
Martin & Lowe
2400 First National Bank Tower
Atlanta, Georgia 30303
658-1200
5- -75 -Machinery Movers Corp.; and
Southeast Machinery, Inc.

[illegible] Forrest Hunter
Suite 2424, National Bank of Georgia Bldg.
Atlanta, Georgia 30303
577-1717 (for Machinery Movers Corp.)

JURY TRIAL DEMANDED

DATE 1973	PROCEEDINGS	Date Ord.
Nov. 28	Complaint, with JURY DEMAND, & Exh. A, filed. (Summons req.)	pl.
	Pltf's first request for admissions to deft. U. S. A., filed.	"
	Pltf's first request to produce to deft. U.S.A., filed.	"
	Pltf's first interrogs. to deft. U.S.A., filed.	"
	Pltf's first request for admissions to deft. DeKalb County, Georgia, filed.	"
	Pltf's first request to produce to deft. DeKalb County, Georgia, filed.	"
	Pltf's first interrogs. to deft. DeKalb County, Georgia, filed.	"
	$250.00 cost bond, filed.	"
29	Summons issued & delivered to U. S. Marshal. on all the above except the bond.	
DEC. 4	Marshal's return of service as to Gohl, Calloway, Coolidge, Morris, Smith, Ward, Williams & U. S. Attorney executed on 11-30-73, filed.	sat
5	Case reassigned to Judge O'Kelley	mjc
12	Consent ORDER ext. time thru 1/14/74 for deft. DeKalb County to ans., etc., filed. (Copies Furnished)	ajt
14 [illegible]		
[illegible]		
28	ANSWER of DeKalb County, Ga. with JURY DEMAND, filed.	
	Deft. DeKalb County's motion to strike, filed.	
	Deft. DeKalb County's motion to dismiss, filed.	
	Deft. DeKalb County's brief in support of above motions, filed.	
	Deft. DeKalb County's responses & objections to pltf's first interrogs. & motion for a protective order with brief, filed.	
	Deft. DeKalb County's responses & objections to pltf's requests for admissions & motion for a protective order with brief, filed.	mj
Feb. 5	Consent Order by Clerk extending time thru 2-5-74 for pltf. to file her reply to deft's motions to strike & dismiss, filed. C. furn.	
15	Deft. U.S.A.'s Motion to Consolidate w/brief and Proposed Order, filed.	a
	Deft. U.S.A.'s ANSWER, Crossclaim and Counterclaim, filed.	
	Deft. U.S.A.'s Answers to Pltfs' First Interrogs., filed.	
	Deft. U.S.A.'s Response to Pltfs' First Request for Admissions, filed.	
	Deft. U.S.A.'s Response to Pltfs' First Request to Produce, filed.	
	Deft. U.S.A.'s First Interrogs., to Pltf J.A. Phillips, filed.	"
19	Brief in opposition to deft., DeKalb County, Georgia's Motions to Strike and dismiss, filed.	
21	SUBMITTED ON DEFT. DEKALB COUNTY'S MOTION TO STRIKE AND MOTION TO DISMISS.	jc
25	Deft. U. S. A.'s memorandum in opposition to DeKalb's motion to dismiss to the cross-claim of the U. S. of America, filed.	"
26	Pltf's response to deft. U. S. of America's motion to consolidate, filed.	"
	SUBMITTED ON U.S.A. MOTION TO CONSOLIDATE.	"
27	ANSWER of Deft. DeKalb County to U.S.A.'s Cross-Claim, filed.	ajt
	Deft. Dekalb County's Amendment to the motion to dismiss and strike with attachments and brief in support, filed. To WCO	"
March 5	Notice of Appearance of George M. Fleming, Torts Section, Civil Division, U. S. Department of Justice, Washington, D. C. as additional counsel for deft USA, filed. To WCO	pld

SEE BACK OF SHEET # 2 for continuation

DATE 1974	PROCEEDINGS	Date Order
[illegible] 7	Pltf's reply to deft, United States of America's counterclaim, filed. WCO	
11	Pltf's amended reply to deft, U. S. Counterclaim, filed.	
	U. S.'s Motion for leave to file third-party complaint, exhibit attachments, filed.	
27	Pltf's answers to deft, United States of America's 1st. interrogs. filed.	
28	[illegible] U. S.A.'s MOTION FOR LEAVE TO FILE THIRD-PARTY COMPLAINT	
APRIL 2	Second interrogs propounded by the deft USA, to pltf., filed WCO	
	[illegible] DeKalb County, Georgia's 2nd supplemental brief, filed. To WCO	
12	Deft, USA, first request to prod. & permit inspection and copying addressed to pltf., filed. To WCO	
17	Pltf's supplemental brief in opposition to deft DeKalb County Georgia s motions to strike and dismiss, filed. To WCO	ple
May 1	Pltf's response to deft USA's first request to produce and permit inspection and copying of documents with attachments, filed.	
	Pltf's answers to deft USA's second interrogs., filed. To WCO	
	[illegible]	
22	ORDER filed - GRANTING U S's motion to consolidate case with C.A. 12293 for discovery purposes but deferring ruling on consolidation for trial purposes until the pretrial hearing; GRANTING U.S.'s motion to file a third-party complaint; GRANTING DeKalb Co's motion to strike portions of pltf's complaint; and GRANTING DeKalb Co's motion to dismiss pltf's complaint as to its claim of a citizen, reference to breach of contract, (copy to counsel, WCO) cross-claim of U. S. against DeKalb County still pending.	
3	Motion of Southeast Machinery, Inc., Machinery Buyers Corp. and Fireman's Fund Insurance Company to vacate, set aside, alter and amend the orders entered on June 27,1974 and for reconsideration, rehearing and new trial, with memo, filed.	
15	Response to pltf's 2nd request for admission addressed to deft. USA, filed.	
	[illegible]	
29	SUBMITTED ON DEFTS' SOUTHEAST MACHINERY, INC., MACHINERY BUYERS CORP., AND FIREMAN'S FUND INSURANCE CO'S MOTION TO VACATE, SET ASIDE, ALTER, AND AMEND THE ORDERS ENTERED 6/27/74 AND FOR RECONSIDERATION, REHEARING AND NEW TRIAL.	
31	Deft USA's request to produce and permit inspection and copying, filed. (ORIG & IMP REQ) IN 19293 WCO	
	Deft USA's 3rd interrogs. to the pltfs' Mines, filed. (In 19293) (orig-&-imp-req) WCO	
Aug. 1	Southeast Machinery, Inc., Machinery Buyers Corp. & Fireman's Fund Insurance Co's notice to take depositions, filed. WCO	
	[illegible]	
5	Deft. U.S.A.'s answers to pltf. Mines's 2nd. interrogs., filed. WCO	
	Marshal's return of service as to Southeast Machinery, Inc., executed 8/[illegible]/74; as to Machinery Buyers Corp., executed on 8/[illegible]/74, on 3rd party complaint, filed. WCO	

Cont'd.

D. C. 109A Rev. Civil Docket Continuation

DATE 1974	PROCEEDINGS	Date Order
JUL. 15	ANSWER of Machinery Buyers Corp. and Southeast Machinery, Inc. to Third-party complaint of United States of America, filed. WCO	
	Motions for summary judgment on behalf of third-party defts. Machinery Buyers Corp. and Southeast Machinery, Inc., brief, affidavit of William J. Fiala, Affidavit of Stanley E. Gavin, filed. WCO	
	JURY DEMAND of Third-party defts. Machinery Buyers Corp. and Southeast Machinery, Inc., filed.	
16	Pltf's Response To Motions To Consolidate of deft USA, filed. WCO	
19	Deft U.S.A.'s memorandum in support of the motion of Southeast Machinery, Inc., Machinery Buyers Corp., and Fireman's Fund Insurance Co. to vacate not set aside, alter and amend the orders entered 6/27/74, and for reconsideration, rehearing and new trial, filed. WCO	
20	Response of Machinery Buyers Corp., Southeast Machinery, Inc., & Fireman's Fund Insurance Co. to the request to produce and permit inspection and copying of the USA, filed. ~~(orig & imp req)~~ WCO	
21	Pltf's amended ANSWERS to deft, U.S.A's first interrogs and pltf's amended response to deft, USA's first request to produce, filed. WCO.	
27	United States' ANSWERS to the Mines' 2nd interrogs., filed. WCO	
Sept. 4	Deft's request forproduction of documents, filed. WCO	
10	Consent order ext. time for deft. and 3rd. pty. pltf. to respond to 3rd. party defts. motion for summary judgment thru Oct. 5, 1974 filed. c/c	
	[illegible]	
OCT. 7	SUBMITTED ON THIRD PARTY DEFTS MOTION FOR SUMMARY JUDGMENT	
8	Consent ORDER ext. time thru 10-18-74 for deft. & third-party pltf. to respond to third-party defts' motion for summary judgment, filed. (copies to counsel) To WCO	
10	Deposition of HENRY F. MANGET, JR. (Partial) filed. (IN 19293)	
16	Deft, U. S. A.'s Motion for Summary Judgment w/memorandum and exhibits, filed.	
18	Pltf's response to deft, United States of America's Request for Production of Documents, w/attachments, filed. (Copies requested) To WCO	
21	Consent Order by Clk. ext. time thru 12-02-74 for pltf. to respond to motion for partial summary, filed. (cf) To WCO	
22	Third-Party Defts, Machinery Buyers Corp & Southeast Machinery, Inc.'s Voluntary Withdrawal and Dismissal w/out prejudice of previously filed Motions for Summary Judgment (filed August 15, 1974), filed. To WCO	
23	Pltf's Notice of Appeal, filed. (Copy of notice to counsel and cert copy of notice and docket entries to USCA.) To WCO	
	Pltf's $250.00 Cost Bond on appeal, filed. To WCO	
Nov. 1	Pltf's Motion For [illegible] order to retain [illegible] certified copy USCA & copies Ord.) To WCO	
	Deft. U.S.A.'s Interrogs to defts Machinery Buyers Corp and Southeast Machinery Inc, filed. To WCO	
22	Certified copy of Order from USCA GRANTING leave to appeal from the interlocutory order of the DC entered on 10-[illegible]-74, filed. To WCO	

DATE 1975	PROCEEDINGS	Date Order or Judgment Note
Nov. 25	GRANTING copies of pleadings to the U.S.C.A. in lieu of the originals, filed. C. counsel. WCO	
26	Deposition of JOHN CZAR, filed. (In 19293)	vl
	REQUIRED PLAINTIFF TO APPEAR UNDER RULE FRAP. 2 cert. copies of docket sheet sent to plff's counsel.	
29	Plff's opposition brief to motion for partial summary judgment by Def., USA, filed. To WCO	
	ORDERED that Exhibit A., filed. To WCO	
DEC. 12	Plff's 2nd Request To Produce to deft U. S. A., filed. WCO	c.
1975		
JAN. 10	Deposition of WILLIAM JAYNE, taken by Deft., filed. (In 19293)	vl
	ORDER that Joan A. Russell Jurnk, Plff's Atty representation west Publishing records be forwarded to U.S.C.A., filed.	
	ORDER OF DISMISSAL WAIVED BY U.S.C.A. w/o Opn. Mdt Rule (7th)	
	D	
	Brief of Fireman's Fund Insurance Company, Southeast Machinery, Inc. and Machinery Buyers Corp. in opposition to motion for partial summary judgment filed by USA, filed. To WCO	pld
Feb. 4	Supplemental Brief of Fireman's Fund Ins. Co., Southeast Machinery Inc., and Machinery Buyers Corp. in Opposition to Motion for Partial Summary Judgment by USA., filed. To WCO	kg
27	Consent ORDER by WCO extending time through 3/17/75, for Deft. U. S. to respond to Plff's request for production, filed. (Copies to coun.) WCO	vb
Mar. 7	Defts. USA's Response to plff's Second Request to Produce, filed. To WCO.	nh
21	Deft' U.S.A.'s Supplemental Memorandum in Support of Motion for Partial Summary Judgment, with exhibit E, filed. To WCO	k
	Consent withdrawal & substitution of counsel with respect to certain 3rd party claims filed by Arthur Cooley and Judith, Conner, Hall, Kaiser & Ewell, be withdrawn & atty. for 3rd party defts. Southeast Machinery Corp. & M. Forest Nimmons entered in substitution as atty. of record, filed. ORD & ATTORNEY'S APPEARANCE made, filed. c.c.	
	ORDER DENYING the United States' motion for partial summary judgment, filed. c.c.	
27	Response of Local Properties, Inc. and Commerce and Industry Insurance Co. New York in Opposition to Motion for Partial Summary Judgment filed by U.S.A., filed.	
Apr.	Answer to cross-c., Inc., Machinery Buyers Corp., Southeast Machinery, Inc.'s Cross-c. of the United States of America & Third-party Complaint, filed.	
	Answer to Counterclaim, etc., of Machinery Buyers Corp., & Southeast Machinery, Inc.'s Brief in Support of Motion to Dismiss, filed.	
9	Plff's Motion to Dismiss with Brief, filed.	k
25	Deft. U. S.'s memo in opposition to Plff's motion to dismiss Deft's counterclaim, filed.	vb
29	SUBMITTED ON SEMAC INDUSTRIES, INC., MACHINERY BUYERS CORP., & SOUTHEAST MACHINERY INC.'S MOTION AND PLEA FOR STAY ON ACCOUNT OF PROCEEDINGS IN BANKRUPTCY COURT, AND ON PLTF'S MOTION TO DISMISS.	vl

DATE 1975	PROCEEDINGS	Date Order or Judgment Note
une 10	Order granting plff's motion to dismiss the counterclaim of the United States, filed. Copy to counsel 6-11-75	
	Order denying defts. Southeast Machinery, Inc., Machinery Buyers Corp., Inc. and Semac Industries, Inc.'s motion to stay on account of proceedings in bankruptcy, filed. Copy to counsel 6-11-75	mjw
29	Defts' Southeast Machinery, Inc., Machinery Buyers Corp., & Fireman's Fund Ins. Co.'s Notice To Continue Depositions, filed.	skb
8	Plff's Motion For Protective Order, with Brief, filed. (To WCO /file)	nao
10	Deft USA's motion for protective order, with mem., filed. (To WCO /file)	skb
15	Defts' Southeast Machinery, Inc., Machinery Buyers Corp. and Fireman's Fund amended notice to continue depositions, filed. WCO	pld
	ORDER	
16	Order that motions for protective order was disposed of by conf. with the attys for both sides on 9/11/75 and there is nothing further for the Court to decide, filed. Copy to counsel.	mjw
e. 12	Plff's motion to compel production of documents by deft. United States of America, with brief, filed.	ple
25	Response to motion to compel production of documents, filed.	dc
12	SUBMITTED TO WCO ON PLFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS BY DEFT UNITED STATES OF AMERICA.	nkb
12	Plffs' Notice of Taking Depositions of United States of America by and through Robert E. Harris, George C. Altman, Douglas B. Moore and Herbert H. Schaff, w/exhibit, filed. WCO	nh
8	Third-party deft, Machinery Buyers Corp's Motion for Summary Judgment as regards the third pty complaint of the United States of America insofar as said Third-party complaint is based upon the claim of Judith Anita Phillips for the death of David E. Phillips, w/attachments, filed. WCO	nh
13	Defts' Notice of Deposition of Mr. Thomas Watson, filed. WCO	pld
14	Plffs' notice to take deposition of deft USA, thru Thomas Watson, filed. WCO	"
	Plffs' notice to take deposition of deft USA, thru Stuart G. Williams and Donald Shreve, filed. WCO	"
	Motion for summary judgment of Southeast Machinery, Inc. as to the third-party complaint of the USA insofar as said third-party complaint seeks indemnity for the death of David E. Phillips, with brief, filed. WCO	"
4	SUBMITTED TO WCO ON 3RD PTY DEFT MACHINERY BUYERS CORP'S MOTION FOR SUMMARY JUDGMENT AS REGARDS THE 3RD PTY COMPLAINT OF U. S.	skb
	Plff Judith Anita Phillips' Withdrawal Of Motion, filed. WCO 2/6	skb
	Defts' Southeast Machinery, Inc., Machinery Buyers Corp., & Semac Industries, Inc., & Fireman's Fund Ins. Co.'s Response To Motion To Separate The Liability Issue For Trial, filed. (To WCO 2/6)	skb
5	Plff Judith Anita Phillips' Response To Motion To Separate The Liability Issue for Trial Of Deft USA, filed. WCO 2/6)	skb
	Supplemental Brief In Support Of Motion For Summary Judgment filed by Machinery Buyers Corp., against USA., filed. WCO 2/6	skb
6	Deft USA's Motion To Separate The Liability Issue For Trial, with Memorandum, filed. WCO 2/6)	skb
	Consent Order extending time through 2/24/76 for plff Marilyn Joyce Sellfors in C74-1069 to respond to Fed deft's Motion to Separate the Liability Issue for Trial, filed. (CF) WCO	nh
9	Consent Order by WCO ext. time thru 3/1/76, for USA to respond to motion for summary judgment of deft Machinery Buyers, Inc., filed. (Copy counsel 2/12) WCO	skb

DATE 1976	PROCEEDINGS	Date Judge
Feb. 12	Response of pltfs Howard, Draper and Nicholson in opposition to motion of deft USA to consolidate all actions for trial on the issue of liability, filed. WCO	p
Feb. 1[illegible]	Response of Pltf. WILLIAM MICHAEL FIELDS in opposition to motion of Deft. USA to consolidate all actions for trial on the issue of liability, filed. WCO	c
24	**Response of Pltf. Marilyn Joyce Sellfors in Opposition to Motion of Deft. USA to Separate the Liability Issue for Trial, filed.**	s
27	**SUBMITTED ON 3rd. Pty. Deft. Southeast Machinery, Inc's Motion For Summary Judgment, as to the 3rd. Pty Complaint of the USA insofar as said 3rd Pty. Complaint seeks indemnity FOR THE DEATH OF DAVID E. PHILLIPS.**	s
27	**SUBMITTED ON DEFT USA'S MOTION TO SEPARATE THE LIABILITY ISSUE FOR TRIAL.**	sc
March 3	**RESUBMITTED TO WCO ON 3rd. PTY. DEFT. MACHINERY BUYERS CORP'S MOTION FOR SUMMARY JUDGMENT AS REGARDS THE 3rd PTY. COMPLAINT OF U.S.**	sc
Mar. 22	[illegible]	
Mar 29	[illegible]	
Apr. 6	RESUBMITTED ON 3RD PTY DEFT MACHINERY BUYERS CORP.'S MOTION FOR SUMMARY JUDGMENT ETC. AND RESUBMITTED ON MOTION FOR SUMMARY JUDGMENT OF SOUTHEAST MACHINERY, INC.	plc
28	Motion for summary judgment of Southeast Machinery, Machinery Buyers and Semac with brief and affidavit of J. Arthur Moxley with attachments, filed. WCO	
	ORDER allowing the various amendments submitted by Machinery Buyers, Southeast Machinery and Semac with respect to their defensive pleadings, filed. (c.s. 4-28)	"
	Amendment of answer of Machinery Buyers and Southeast Machinery to the 3rd pty complaint of USA, filed. WCO	"
May 5	ORDER GRANTING Motion for Summary Judgment of Machinery Buyers' and GRANTING Motion for Summary Judgment of Southeast Machinery, Inc. and DENYING the United States' Motion requesting separation of the issue of liability from the issue of damages for purposes of trial and concluding that ruling on question of whether action is to be tried in a bifurcated manner await the pretrial conference, filed. (Copies to counsel 5/5/76)	mj
7	USA's memorandum in opposition to motion for summary judgment on behalf of Machinery Buyers as regards the third party complaint of the USA insofar as said third party complaint is based upon the claim of Judith Anita Phillips for the Death of David E. Phillips with exhibits, filed.	plc
	USA's memorandum in opposition to motion for summary judgment on behalf of Southeast Machinery as regards the 3rd pty complaint of USA insofar as said 3rd pty complaint seeks indemnity for the Death of David E. Phillips, filed.	"
12	First interrogs. of Fireman's Fund, Southeast Machinery, Machinery Buyers and Semac, Inc. to USA, filed.	
25	SUBMITTED ON MOTION FOR SUMMARY JUDGMENT OF SOUTHEAST MACHINERY, MACHINERY BUYERS AND SEMAC WITH RESPECT TO MAIN CLAIMS, THIRD PARTY CLAIMS, ET C.	"
June 2	USA's memorandum in opposition to motion for summary judgment of Southeast, Machinery Buyers and Semac, filed.	"
7	Supplemental brief of Southeast, Machinery Buyers and Semac in support of motion for summary judgment, filed.	"
	Statement of uncontested facts in support of motion for summary judgment, filed.	"

PLAINTIFF	DEFENDANT	DOCKET NO.
JUDITH ANITA PHILLISP, ET AL	USA, ET AL	PAGE 5 OF PAG

DATE 1976	NR.	PROCEEDINGS
June 9	pld	First interrogs. of Fireman's Fund, Southeast Machinery, Machinery Buyers and Semac to pltf Chaisson, filed. WCO
	"	First interrogs. of Fireman's Fund, Southeast Machinery, Machinery Buyers and Semac to The Mirce pltfs, filed. WCO
	"	First interrogs. of Fireman's Fund, Southeast Machinery, Machinery Buyers and Semac to pltf Fields, filed. WCO
	"	First interrogs. of Fireman's Fund, Southeast, Machinery Buyers and Semac to Dekalb County, Georgia, filed. WCO
	16 "	Memorandum of Pearlie Chaisson in opposition to motion for summary judgment of Southeast, Machinery Buyers and Semac, filed. WCO
July 12	"	Proposed consent order to ext. time thru 8-11-76 for pltf Wm. Fields to respond to first interrogs. of Fireman's, Southeast, Machinery Buyers and Semac, rec'd. WCO for approval
	13 "	Second supplemental brief of Southeast, Machinery Buyers and Semac in support motion for summary judgment, filed.WCO
	14 "	Machinery Buyers, Southeast, Semac and Fireman's first request for admissions directed to Dekalb County with exhibits, filed. WCO
	"	Consent ORDER ext. time thru 8-11-76 for pltf Wm. Fields to file answers, etc. to first interrogs. of Fireman's, Southeast, Machinery Buyers and Semac, filed. (cy counsel 7-15) WCO
Aug. 2	"	Machinery Buyers, Southeast, Semac and Fireman's second request for admissions directed to Dekalb County with exhibits, filed. WCO
	10 "	Consent ORDER ext. time thru 9-10-76 for pltf Wm. Michael Fields to file answers or objections to first interrogs. of Fireman's Fund, Southeast, Machinery Buyers and Semac, filed. (CF) WCO
	"	Dekalb County Georgia's motion for protective order with brief, filed. WCO
	"	Responses and Objections of Dekalb County, Georgia to first request for admiss of Machinary Buyers, Southeast, Semac and Fireman's Fund, filed. WCO
	18 dw	Answers to First Interrogs of Fireman's Fund Insurance Company, Southeast Machi Inc., Machinery Buyers Corp. and Semac Industries, Inc. to The United States of America, filed. WCO
	23 pld	Machinery Buyers, Southeast, Semac and Fireman's brief in support of their first request for admission directed to Dekalb County and in opposition to Dekalb Co motion for protective order, filed. WCO
	30 "	Dekalb County's motion for protective order with brief, filed. WCO'
	"	Dekalb County's response and objections to second request for admissions of Machinery Buyers, Southeast, Semac and Fireman's Fund, filed. WCO
	31 "	SUBMITTED DEKALB COUNTY GEORGIA'S MOTION FOR PROTECTIVE ORDER.
	"	Pltf Chaisson answers to first interrogs. of Fireman's Fund, Southeast, Machine Buyers and Semac, filed. WCO
Sept. 9	"	Machinery Buyers, Southeast, Semac and Fireman's brief in support of their second request for admission directed to Dekalb County and in opposition to Dekalb's motion for protective order, filed. WCO
	10 "	Proposed consent order to ext. time thru 10-10-76 for pltf Fields to respond to first interrogs. of Fireman's, Fund, Southeast, etc., rec'd. WCO for approval
	15 "	Consent ORDER ext. time thru 10-10-76 for pltf Fields to respond to first interrogs. of Fireman's Fund, Southeast, etc., filed. (cy counsel 9-17) WCO
	20 "	Certified copy of Judgment on rehearing en banc AFFIRMED by USCA and further ordered that pltf pay to deft and third party defts the costs on appeal to be taxed by the Fifth Circuit, filed.(with opinion) cy counsel 9-23)
	23 "	SUBMITTED ON DEKALB COUNTY GEORGIA'S MOTION FOR PROTECTIVE ORDER OF 9-30-76.
	mjw	Order DENYING motions for summary judgment of Southeast Machinery Semac Industries, Inc. and Machinery Buyers Corp., filed. Copy to counsel.

DC 1169 (Rev.

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO ___ ____ PAGE ___ OF ___ PAGES

DATE 1976	NR.	PROCEEDINGS
Oct. 12	pld	ORDER granting Dekalb County's motions for protective order, filed. (cy counsel 10-14)
27	"	Letter from pltf's counsel requesting clerk to forward the record to the U. S. Supreme Court, filed.
Nov. 10	"	Copies of file that were sent on appeal 11-22-74 mailed to U.S.S.C. cert. mail (AC

(Caption omitted in printing) [6]

COMPLAINT

Filed: Nov. 28, 1973

Comes now JUDITH ANITA PHILLIPS, Plaintiff in the above entitled cause, and by way of Complaint shows the Court as follows:

COUNT ONE

1.

Plaintiff, JUDITH ANITA PHILLIPS, is a citizen of the State of Tennessee, residing at 1406 Monroe Street, Maryville, Blount County, Tennessee.

2.

This action is brought against the UNITED STATES OF AMERICA pursuant to the Federal Tort Claims Act, 28 U.S.C. §1346(b). Plaintiff has exhausted her administrative remedies pursuant to 28 U.S.C. §2675 and this action is brought within the period specified by 28 U.S.C. §2401(a).

3.

The Defendant, DeKALB COUNTY, GEORGIA, is a political subdivision in the State of Georgia, and when the Chairman and each Member of the Board of Commissioners of Roads and Revenues of DeKalb County, Georgia, are served with a copy of the Complaint and Summons in this action, Defendant will be subject to the

[6]

jurisdiction of this Court, pursuant to 28 U.S.C. §1332. The Chairman and each Member of the Board of Commissioners of Roads and Revenues have been put on notice of the [7] existence of Plaintiff's claim. This matter exceeds $10,000.00, exclusive of interest and costs.

4.

On February 26, 1973, at approximately 10:15 a.m., E.S.T., Plaintiff's decedent was employed as a pilot aboard Aircraft Number N454RN, and at all times material hereto was performing his alternate duty of co-pilot aboard said aircraft, when, shortly after takeoff, said aircraft crashed approximately two miles south/southwest of the DeKalb-Peachtree Airport, killing all persons aboard, including Plaintiff's decedent.

5.

A short time after said crash, there were found the remains of many dead birds at and near the end of Runway 20L, from which the subject aircraft departed. There were also discovered to be thousands of birds swarming and flying over said airport and the adjacent garbage dump, which was being operated by Defendant, DeKALB COUNTY, GEORGIA.

6.

The aircraft here involved was Learjet, Model 24, a twin-engined turbine-powered jet aircraft manufactured by Gates Learjet Corporation, and the engines thereto affixed were Model CJ610-4 Turbine-powered Jet Engines manufactured by General Electric Company.

7.

At all times material hereto, the Defendant, UNITED

[8]

STATES OF AMERICA, by and through its duly constituted, qualified, and acting agency and authority, namely the Federal Aviation Administration, and Defendant, DeKALB COUNTY, GEORGIA, knew of the existing and pre-existing bird hazard at the DeKalb-Peachtree Airport, in that said bird hazard had existed for a substantial period of time, to wit, several years. Said Defendants further knew that the maintenance of an adjacent and immediately contiguous county garbage dump provided an attractive food supply and nesting place for thousands of birds which daily were attracted to and did avail themselves of [8] said food supply and nesting place at said county garbage dump and airport. There was thus created a substantial hazard to safe operations of departing and arriving jet turbine-powered aircraft, including the said aircraft in which Plaintiff's decedent lost his life as a result of the ingestion of a large number of birds into the engines, causing consequent loss of power by the engines on said aircraft.

8.

The Defendant, UNITED STATES OF AMERICA, through the Department of Transportation, Federal Aviation Administration, is guilty of negligence in at least the following particulars:

(a) In failing to perform the duty owed by the Administrator of the Federal Aviation Administration to establish and assure the safety of the design and manufacture of aircraft and in issuing certificates for the subject plane and its engines without in any way limiting or placing conditions upon their use in areas where birds are known to constitute a hazard to air navigation;

(b) In failing to perform the procedures already established whereby planes, especially jet aircraft, would not be cleared for takeoff where birds are a known hazard without checking to discover whether birds were, at the time of takeoff, of sufficient quantity to constitute a menace;

(c) In failing to issue a warning to the crew aboard the subject aircraft, comprising the pilot and co-pilot thereon, by control tower personnel, so as to properly and adequately apprise the pilot and co-pilot as to the probable danger then known, or which in the exercise of ordinary care should have been known, to the controller, who was at all times material hereto an employee of said Defendant through its authorized agency, the Federal Aviation Administration;

(d) Notwithstanding the knowledge of the Federal Aviation Administration as to the flight hazard posed by the presence of the county garbage dump and the birds attracted thereby for a substantial period of time [9] preceding the subject incident, the Defendant, through the Federal Aviation Administration agency, failed to alleviate and/or eliminate the severe flight hazard posed thereby.

9.

At all times material hereto, Defendant, DeKALB COUNTY, GEORGIA, was operating the DeKalb-Peachtree Airport in a proprietary and ministerial capacity, as distinguished from a governmental capacity, and in the performance of said ministerial or proprietary capacity, was negligent in at least the following particulars:

(a) In failing to provide, maintain, and operate an airport reasonably safe for the jet aircraft permitted to utilize the same;

(b) In failing to exercise ordinary care in the maintenance and operation of the DeKalb-Peachtree Airport and a county garbage dump located on said airport property, whereby the dump and the birds attracted thereby constituted an unreasonable hazard to jet aircraft departing a runway of said airport.

10.

At the time of his death, David Emanuel Phillips left surviving him his wife, Judith Anita Phillips, Plaintiff herein; and one minor child, his daughter, Michele Diana Phillips, 3 years of age. Plaintiff brings this action for the wrongful death of her decedent on her own behalf and on behalf of the minor child of the decedent, for the full value of the life of Plaintiff's decedent as will be shown by the evidence and as provided for and contemplated by the laws of the State of Georgia.

11.

At the time of his death, Plaintiff's husband was 28 years of age, and had a life expectancy of 46.52 years, according to the Annuity Mortality Table for 1949, Ultimate.

12.

At the time of his death, Plaintiff's husband was employed by Machinery Buyers Corporation, where he was earning in excess of $20,000.00 [10] per year. Plaintiff's decedent was an experienced and accomplished pilot, having satisfied the requirements for and having been awarded all licenses that one may achieve and obtain under authority of the Federal Aviation Administration, including the rating of "Airline Transport Pilot", which is the ultimate and highest rating obtainable. Plaintiff's

decedent husband amassed several thousand hours of flying experience as a pilot in all categories of licenses, and had great prospects for future increases in earning ability and capacity.

13.

The subject occurrence resulted from and was proximately caused by the joint, combined, and concurring negligence of the Defendants as aforesaid, for which Defendants are jointly and severally liable.

WHEREFORE, Plaintiff demands a trial by jury, and judgment against the Defendants, jointly and severally, in the sum of One Million Dollars ($1,000,000.00) and the costs of this action.

COUNT TWO

14.

The allegations of Paragraphs 1 through 12 are hereby adopted and incorporated by reference as if they were fully set forth herein.

15.

At all times herein pertinent, the Defendant, UNITED STATES OF AMERICA, through the Federal Aviation Administration, was required by statute to take adequate measures to insure that birds would not act as airport hazards to aircraft utilizing an airport funded wholly or in part through Federal appropriations. Airport and Airway Development Act of 1970, 49 U.S.C. §1701, et seq.

16.

At all times herein pertinent, and for several years prior to February 26, 1973, Defendant, UNITED STATES

OF AMERICA, through the Federal Aviation Administration, knew of the existence of a bird hazard at the [11] DeKalb-Peachtree Airport which made it unsafe to operate jet aircraft at the same.

17.

Despite this knowledge, as aforesaid, Defendant, UNITED STATES OF AMERICA, failed to perform the duties required of them, and as a result of the negligence of Defendant, the aircraft in which Plaintiff's decedent was employed as a pilot, but acting in his alternate capacity as co-pilot, was disabled through and because of the bird hazard, as aforesaid.

18.

The negligence of Defendant, UNITED STATES OF AMERICA, was the sole, direct and proximate cause of Plaintiff's decedent's death, for which defendant is liable.

WHEREFORE, Plaintiff demands a trial by jury, and judgment against Defendant, UNITED STATES OF AMERICA, in the sum of One Million Dollars ($1,000,000.00) and the costs of this action.

COUNT THREE

19.

The allegations of Paragraphs 1 through 12 are hereby adopted and incorporated by reference as if fully set forth herein.

20.

The Defendant, DeKALB COUNTY, GEORGIA, at all times herein pertinent, knew of the existence of a bird

hazard created by a county garbage dump owned and operated by Defendant.

21.

Despite numerous demands by Defendant, UNITED STATES OF AMERICA, to discontinue the operation and maintenance of said garbage dump adjacent to and contiguous with said airport. Defendant, DeKALB COUNTY, GEORGIA, continued the operation of said garbage dump, when it knew for a substantial period of time prior to the incident here concerned, to wit, several years, that the bird hazard did exist and would continue to exist.

[12]

22.

By operating a garbage dump adjacent to an airport, whereby aircraft might collide, and have collided, with birds attracted by said garbage dump, Defendant, DeKALB COUNTY, GEORGIA, is guilty of maintaining a public nuisance within the meaning of Georgia law, thereby causing special damage to Plaintiff, for which Plaintiff hereby makes demand.

23.

The nuisance as maintained by Defendant, DeKALB COUNTY, GEORGIA was the sole, direct, and proximate cause of Plaintiff's decedent's death, for which Defendant is liable.

WHEREFORE, Plaintiff demands a trial by jury and judgment against Defendant, DeKALB COUNTY, GEORGIA, in the sum of One Million Dollars ($1,000,000.00) and the costs of this action.

24.

The allegations of Paragraphs 1 through 12 are hereby adopted and incorporated by reference as if fully set forth herein.

25.

During 1960, and pursuant to the provisions of Public Law 289, DeKalb-Peachtree Airport, formerly a Naval Air Station, was returned as surplus military property to Defendant, DeKALB COUNTY, GEORGIA, for use as a civil airport.

26.

Since 1960, Defendant, UNITED STATES OF AMERICA, has entered into six (6) Federal Grants with Defendant, DeKALB COUNTY, GEORGIA, for the purpose of constructing and implementing airport improvements, including the construction of Runway 20L. An example of one such Agreement is appended hereto as Exhibit "A" and is incorporated herein by reference.

27.

Upon the approval of each Federal Grant for airport improvements, Defendant, DeKALB COUNTY, GEORGIA, gave certain Assurances, termed [13] "Sponsor's Assurances", including but not limited to the following:

> "The Sponsor will operate and maintain in a safe and serviceable condition the airport and all facilities thereon and connected therewith which are necessary to serve the aeronautical users of the airport other than facilities owned or controlled by the United States, and will not permit any activity

thereon which would interfere with its use for airport purposes."

* * *

"The Sponsor will not make or permit the making of any changes or alterations in the airport or any of its facilities other than in conformity with the airport layout plan as so approved by the FAA, if such changes or alterations might adversely affect the safety, utility or efficiency of the airport."

* * *

"Insofar as is within its power and to the extent reasonable, the Sponsor will take action to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations including landing and takeoff of aircraft."

28.

Since June, 1962, Defendant, DeKALB COUNTY, GEORGIA, has received in excess of $1,025,224.06 pursuant to the six aforementioned Grant Agreements with the Federal Government.

29.

Contrary to the assurances given by DeKALB COUNTY, GEORGIA, for the receipt of said monies, and in direct contravention to the airport layout plan developed by DeKALB COUNTY, GEORGIA, and approved by the Federal Aviation Administration, Defendant, DeKALB COUNTY, GEORGIA, established, constructed, and maintained a garbage dump upon and adjacent to the DeKalb-Peachtree Airport, which garbage dump has at all times herein pertinent been incompatible with

normal and safe airport operations, including the landing and takeoff of jet aircraft, by reason of the fact that said garbage dump attracted birds in large numbers, which when ingested into engines of jet powered aircraft would damage said engines and cause a loss of power therein.

[14] 30.

The crash of Learjet N454RN and the loss of life of Plaintiff's decedent were caused by the ingestion of said birds into the engines of the subject aircraft.

31.

Defendant, DeKALB COUNTY, GEORGIA, has willfully violated the provisions of said Grant Agreements in establishing and permitting to exist said garbage dump, which assurances as given by DeKALB COUNTY, GEORGIA, were designed and intended to inure to the benefit of Plaintiff's decedent herein, as a third party beneficiary, and thus, Defendant, DeKALB COUNTY, GEORGIA, is liable to the Plaintiff for breach of contract.

WHEREFORE, Plaintiff demands a trial by jury and judgment against the Defendant, DeKALB COUNTY, GEORGIA, in the sum of One Million Dollars ($1,000,000.00) and the costs of this action.

ROSS & FINCH

/s/ CLAUDE R. ROSS

/s/ BAXTER H. FINCH

/s/ A. RUSSELL BLANK

Attorneys for Plaintiff

3417 First National Bank Tower
Atlanta, Georgia 30303

(404) 658-9070

(Exhibits to Complaint omitted in printing)

(Caption omitted in printing)

ANSWER OF DEKALB COUNTY, GEORGIA

Filed: Jan. 28, 1974

Comes now DeKalb County, Georgia, and responds to the Complaint of Plaintiff as follows:

FIRST DEFENSE

COUNT ONE

1.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1 and 2 of Count One of the Complaint of Plaintiff.

2.

Responding to Paragraph 3 of Count One of the Complaint of Plaintiff, this Defendant admits that DeKalb County, Georgia is a political subdivision of the State of Georgia. Responding further, this Defendant denies the remainder of the allegations contained in Paragraph 3 of Count One of the Complaint of Plaintiff.

3.

Responding to Paragraph 4 of Count One of the Complaint of Plaintiff, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation that Plaintiff's decedent was performing his alternate duty of co-pilot aboard said aircraft at the time of the occurrence described. Responding further, the

remainder of the allegations contained in Paragraph 4 of Count One of the Complaint of Plaintiff are admitted by this Defendant.

[96]

4.

Responding to Paragraph 5 of Count One of the Complaint of Plaintiff, this Defendant admits that following the crash of the aircraft there were some dead birds at and near the end of Runway 20L. Further responding, the remainder of the allegations contained in Paragraph 5 of Count One of the Complaint of Plaintiff are denied by this Defendant.

5.

This Defendant admits the allegations contained in Paragraph 6 of Count One of the Complaint of Plaintiff.

[97]

6.

This Defendant denies the allegations contained in Paragraph 7 of Count One of the Complaint of Plaintiff.

7.

The allegations of Paragraph 8 of Count One of the Complaint of Plaintiff are directed to The United States of America and the response is not required of this Defendant.

8.

The allegations contained in Paragraph 9 of Complaint of Plaintiff, including subparagraphs (a) and (b) thereof, are denied by this Defendant.

9.

Responding to Paragraph 10 of Count One of the Com-

plaint of Plaintiff, this Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in respect of the survivors of decedent, David Emanuel Phillips. Responding further, this Defendant denies Plaintiff is entitled to recover of DeKalb County, Georgia any sum in damages for the wrongful death of David Emanuel Phillips.

10.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 and 12 of Count One of the Complaint of Plaintiffs.

11.

The allegations contained in Paragraph 13 of Count One of the Complaint of Plaintiff are denied by this Defendant.

WHEREFORE, DeKalb County, Georgia demands a trial by jury and prays it be hence discharged without liability on Count One of the Complaint of Plaintiff.

COUNT TWO

12.

Count Two of the Complaint of Plaintiff is directed to The United States of America and fails to set forth a claim or cause of action against this Defendant upon which relief can be granted and this Defendant is not required to respond further to Count Two.

WHEREFORE, DeKalb County, Georgia prays it be hence discharged without liability on Count Two of the Complaint of Plaintiff.

COUNT THREE

13.

Plaintiff incorporates the allegations of Paragraphs 1 through 12 as Paragraph 19 of Count Three of the Complaint, and this Defendant likewise incorporates and adopts its responses to Paragraphs 1 through 12 of Count One of the Complaint of Plaintiff as its response to Paragraph 19 of Count Three of the Complaint.

14.

The allegations contained in Paragraph 20 of Count Three of the Complaint of Plaintiff are denied by this Defendant.

15.

Responding to Paragraph 21 of Count Three of the Complaint of Plaintiff, this Defendant admits that DeKalb County, Georgia had corresponded with, received correspondence from and had conferences with personnel of the Federal Aviation Administration in respect of the use and maintenance of [98] the landfill contiguous to the land utilized as an airport facility. Responding further, the remainder of the allegations contained in Paragraph 21 of Count Three of the Complaint of Plaintiff are denied.

16.

This Defendant denies the allegations contained in Paragraphs 22 and 23 of Count Three of the Complaint of Plaintiff.

WHEREFORE, DeKalb County, Georgia demands a trial by jury and prays it be hence discharged on Count Three of the Complaint of Plaintiff without liability.

COUNT FOUR

17.

Plaintiff incorporates the allegations of Paragraphs 1 through 12 as Paragraph 24 of Count Four of the Complaint, and this Defendant likewise incorporates its responses to Paragraphs 1 through 12 of Count One of the Complaint as its response to Paragraph 24 of Count Four as if fully set forth herein.

18.

The allegations contained in Paragraphs 25 and 26 of the Complaint of Plaintiff are admitted by this Defendant.

19.

Responding to Paragraph 27 of Count Four of the Complaint of Plaintiff, this Defendant avers that the contents, provisions and agreements of each Federal Grant Agreement speaks for itself and no further response is required of this Defendant.

20.

This Defendant admits the allegations contained in Paragraph 28 of Count Four of the Complaint of Plaintiff.

21.

This Defendant denies the allegations contained in Paragraph 29 of Count Four of the Complaint of Plaintiff.

22.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30 [99] of Count Four of the Complaint of Plaintiff.

23.

This Defendant denies the allegations contained in Paragraph 31 of Count Four of the Complaint of Plaintiff.

WHEREFORE, DeKalb County, Georgia demands a trial by jury and prays it be hence discharged without liability.

SECOND DEFENSE

Counts One, Two, Three and Four of the Complaint of Plaintiff fail to state a claim or cause of action against this Defendant upon which relief can be granted.

WHEREFORE, DeKalb County, Georgia demands a trial by jury and prays it be hence discharged without liability.

HARVEY, WILLARD & ELLIOTT
/s/ WENDELL K. WILLARD
WENDELL K. WILLARD

125 Trinity Place
Decatur, Georgia

LONG, WEINBERG, ANSLEY
& WHEELER
/s/ MEADE BURNS
MEADE BURNS
/s/ F. CLAY BUSH
F. CLAY BUSH
Attorneys for Defendant,
DeKalb County, Georgia

JURY TRIAL DEMANDED

3000 The Equitable Building
Atlanta, Georgia 30303
525-5903

(Caption omitted in printing)

MOTION TO DISMISS

Filed: Jan. 28, 1974

Now Comes DEKALB COUNTY, GEORGIA, one of the Defendants in the above-styled action, and moves the Court, pursuant to Rule 12, Fed. Rules of Civ. Proc., for the dismissal of the Complaint, showing the Court as follows:

1.

The Complaint fails to state a claim or cause of action against DeKalb County, Georgia, upon which relief can be granted.

2.

None of the claims asserted against Defendant, DeKalb County, Georgia, can be granted owing to its governmental immunity.

3.

More particularly, DeKalb County, Georgia, shows the Court that the Complaint fails to state a claim upon which relief can be granted in the following respects:

(a) In Georgia, no right of action will lie against a County for the creation and/or maintenance of a nuisance;

(b) There is no right of action in plaintiffs, as third-party beneficiaries, on any alleged breach of any Federal Grant Agreements entered into by and between DeKalb County, Georgia, and the Federal Aviation Administration because there is no intent made manifest within such Federal Grant Agreements to confer

[104]

upon third persons the type [105] of benefit claimed by Plaintiffs in this action;

(c) Even if the Federal Grant Agreements entered into by and between DeKalb County, Georgia and the Federal Aviation Administration were intended to benefit the public in the manner claimed by Plaintiffs, the Complaint shows on its face that these Federal Grant Agreements have not been breached by DeKalb County, Georgia, in operating a sanitary landfill on property contiguous to DeKalb-Peachtree Airport in that the Federal Aviation Administration is alleged to have had knowledge of and thus to have consented to and consciously allowed the maintenance of said landfill;

(d) Even if Plaintiffs otherwise had the right to sue as third-party beneficiaries for an alleged breach of the Federal Grant Agreements entered into by DeKalb County, Georgia, and the Federal Aviation Administration, Plaintiffs cannot recover damages for any alleged wrongful deaths stemming from the alleged breach because a third-party beneficiary's rights under any contract are no greater than the rights of the parties themselves, and the Federal Grant Agreements which Plaintiffs allege to have been breached confer no right on any party to recover damages for personal injury or wrongful death in the event of their breach;

(e) Plaintiffs cannot recover against DeKalb County, Georgia on a theory of negligence as a matter of law owing to said Defendant's governmental immunity from suit based on such a theory.

WHEREFORE, Defendant, DeKalb County, Georgia prays that its Motion be inquired into and sustained, and that the Complaint be dismissed as to it.

[106]

(Signature omitted in printing)

[222]

(Caption omitted in printing)

AMENDMENT TO THE MOTION
TO DISMISS AND STRIKE

[222] Filed: Feb. 27, 1974

Now comes DEKALB COUNTY, GEORGIA, one of the Defendants in the above-styled action, and amends its Motion to Dismiss and Motion to Strike, filed previously with the Court, as follows:

1.

Defendant relies upon the affidavit attached hereto, marked Exhibit "A" and by reference made a part hereof, in support of its Motion to Dismiss and Motion to Strike.

WHEREFORE, Defendant, DeKalb County, Georgia prays that its Motion to Dismiss and Motion to Strike be inquired into and sustained.

(Signature omitted in printing)

[223] *AFFIDAVIT*

STATE OF GEORGIA
COUNTY OF DEKALB

Before me, the undersigned attesting officer in and for said State and County, came Cal M. Sandman, who being first duly sworn, deposes and says on oath that he is the Director of Finance and the Administrator for the Financial Services Department of DeKalb County, Georgia and is familiar with the following facts and makes this affidavit in connection with litigation arising out of a crash of a Lear Jet in DeKalb County, Georgia on or about Feb. 26, 1973, and says as follows: That on December 31, 1971 and December 31, 1972, the DeKalb-Peachtree Airport operated at a loss as reflected on Exhibits E-4 for the above-mentioned years which are attached hereto and made a part hereof.

Deponent further says that as of the date of this affidavit no figures are available for 1973 for the reason that no audit of the Airport has been made to date, but said figures should be available sometime in April 1974.

/s/ CAL M. SANDMAN
CAL M. SANDMAN

(Jurat omitted in printing)

[224] EXHIBIT E-4

DeKALB COUNTY, GEORGIA
DeKALB-PEACHTREE AIRPORT FUND
OPERATING FUND
STATEMENT OF NET INCOME (LOSS)
FOR THE YEAR ENDED DECEMBER 31, 1971

RENTAL REVENUES:	
Commercial tenants	$238,169
General Fund	1,877
	240,046
OPERATING EXPENSES:	
Salaries and employee benefits	60,831
Professional and consulting fees	2,204
Maintenance and repairs	144,547
Postage	227
Telephone and telegraph	799
Supplies	962
Convention expense, dues and subscriptions	957
Vehicle expense	9,416
Depreciation	118,857
Administrative expense	23,089
Insurance—other than group	567
Total Operating Expenses	362,456
OPERATING INCOME (Loss)	(122,410)
OTHER INCOME:	
Vending machine collections	70
Damage claims	26
General Fund contribution	1,733
Total Other Income	1,829
NET INCOME (Loss)	($120,581)

/s/ CAL M. SANDMAN

The note on Exhibit E-1 is an integral part of this exhibit.

[225]

DeKALB COUNTY, GEORGIA
DeKALB-PEACHTREE AIRPORT FUND
OPERATING FUND
STATEMENT OF NET INCOME (LOSS)
FOR THE YEAR ENDED DECEMBER 31, 1972

RENTAL REVENUES:	
Commercial tenants	$266,376
General Fund	1,457
	267,833
OPERATING EXPENSES:	
Salaries and employee benefits	60,545
Professional fees	6,482
Maintenance and repairs	169,766
Postage	220
Telephone and telegraph	703
Conferences, dues and subscriptions	1,077
Vehicle expense	4,266
Depreciation	120,775
Administrative expense	6,804
Insurance—other than group	547
Contributions to	
Capital Projects Funds	5,750
Total Operating Expenses	376,935
OPERATING INCOME (Loss)	(109,102)
OTHER INCOME:	
Other operating revenue	57
Damage claims	69
Total Other Income	126
NET INCOME (Loss)	($108,976)

/s/ CAL M. SANDMAN

PART C
APPENDIX
IN
NO. 76-700

FIREMAN'S FUND INSURANCE COMPANY,
Petitioner,

v.

DEKALB COUNTY, GEORGIA, *et al.*,
Respondents.

PLAINTIFFS

DEFENDANTS

US

9/25/74

Manget, T. F., etc.

ATTORNEYS

J. Arthur Mozley
Smith, Cohen, Ringel, Kohler, Martin & Lowe
2400 First National Bank Tower
Atlanta, Ga. 30303
(658-1200)

Kendall K. Willard
Harvey, Willard & Elliott
125 Trinity Place
Decatur, Georgia (atty. for Manget
& Suhl, Williams, Callaway, Smith,
Meade Burns (Morris, Ward & Colliers
Long, Steinberg, Ansley & Wheeler
3000 The Equitable Bldg.
Atlanta, Ga. 30303 525--5903

CAUSE

Claim against U.S.A. and others for damage to airplane in crash, based on Federal Tort Claims Act, 28 USC 1346 and diversity, 28 USC 1332.

John W. Stokes, Jr.
William D. Mallard, Jr.
George M. Fleming
Torts Section, Civil Division
U.S. Department of Justice
Washington, D.C. 20530
202 739-4689

Clerk's fee $15.00
Marshal $37.80
Marshal's fee 8-1-74 $72.18

CHECK HERE CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			JURY DEMAND
	DATE	RECEIPT NUMBER	C.D. NUMBER	PLAIN / DEFT
	JAN 8 1974	Smith, Cohen, Ringel, Kohler, Martin & Lowe	#62	DATE
	OCT - 4 1974	Smith, Cohen, Ringel et al	#56	STATISTICAL CARD
				CARD / DATE STAMPED
				JS5
				JS6

UNITED STATES DISTRICT COURT DOCKET

BEST COPY AVAILABLE

DATE	PROCEEDINGS	
Jan. 5	Complaint, filed.	
	Summons issued and delivered to U. S. Marshal.	
Feb. 1	Marshal's return of service executed as to [illegible] on 1-30-74; as to A. C. Guhl, U. A. Williams, T. M. Callaway, Jr., Hoke Clayton Smith, Robert J. Morris, Horis A. Ward, W. M. Coolidge, DeKalb County and Dekalb County on 1-23-74; as to H. F. Manget on 1-28-74, filed. /JURY DEMAND, filed.	plt
Feb. 12	ANSWER of Dekalb County, Georgia and the chairman and members of the Board of Commissionsers of Roads and Revenues of Dekalb County, filed.	
20	Defts. Dekalb County, Georgia, A. C. Guhl, T.M. Callaway, Jr., Hoke Clayton Smith, Robert J. Morris, Horis A. Ward, and W. M. Coolidge	
	Motion to dismiss, filed. Motion to Strike, filed. Brief in support of motion to dismiss and strike, filed. Motion to dismiss for insufficient service of process with affidavits and brief in support, filed.	jmw
15	Deft. U.S.A.'s Motion to Consolidate w/brief and Proposed Order filed.	
	H. F. Manget, ind. & manager	jb
19	Consent Order ext. time thru 3/11/74, for deft/to file answer, etc.,, filed. (Copies furn)	skb
	Consent Order extending time thru 3011-74 for County defts. to answer, etc., filed. C. furn.	lkn
21	Summons reissued & delivered toU.S. Marshal on complaint as to county defts and Dekalb County.	plt
21	Response of pltf. to motion for consolidation filed by deft. U.S.A., filed.	jmw
March 5	Notice of appearance of George M. Fleming, Torts Section, Civil Division, Department of Justice, Washington, D. C. as add'l counsel for U. S., filed.	pld
5 11	RESPONSE of H. F. Manget with JURY DEMAND, filed.	lkn
5 12	RESPONSE of DeKalb County, Georgia and the Chairman and Members of the Board of Commissioners of Roads and Revenues of DeKalb County, filed.	
13	SUBMITTED ON DEFT' U.S.A.'S MOTION TO CONSOLIDATE.	ajb
	ORDER by the Court upon consent of ptys. ext. time thru 4/1/74 deft. U.S. to respond to complaint, filed.(c. counsel)	dt
15	Consent ORDER ext. time thru 3-26-74 for pltf to file any brief and pleadings in response to motions to dismiss and motions to strike filed by Comty defts. filed. (copy to counsel)	plt
101 25	Brief of pltf. in opposition to motion to dismiss and motion to strike filed by the Dekalb County defts, filed.	jmw
28	SUBMITTED ON DEKALB COUNTY DEFTS. MOTION TO DISMISS, MOTION TO STRIKE, MOTION TO DISMISS FOR INSUFFICIENT SERVICE OF PROCESS.	jmw
128	Pltf's 1ST AMENDMENT TO COMPLAINT & ORDER ALLOWING same filed subject to objection, filed. C. furn. To WCO....	lkn
APRIL 5	United States Memorandum in opposition to Dekalb County's motion to dismiss as to the cross-claim of the United States, filed. TO WCO	jmw
	Deft. United States ANSWER, CROSS-CLAIM, and COUNTERCLAIM, filed.(WCO)	jmw
1908	Supplementalbrief of DeKalb County, Ga. & the individual defts., filed. To WCO.	lkn
10	ANSWER of pltf to counter-claim of def. USA, filed. To WCO	pdt
	Pltf's motion to dismiss counter-claim of deft USA with brief, filed. To WCO	pld
12	Deft USA's ANSWER to pltf's first amendment to complaint, filed. To WCO	"
15	ANSWER of Dekalb County to Corss-claim of deft, USA, filed.	pdt
16	Response of Plaintiff to the answer of Defendant U.S. to 1st Amendment of Comolaint filed. with cert. of service.	sdm
16	Order extending time to file answer through May 6, 1974 by all defendants to amended complaint, filed. c.f. by counsel.(Contd)	sdm

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF: FIREMAN'S FUND INSURANCE CO. | DEFENDANT: UNITED STATES OF AMERICA, et al | DOCKET # | PAGE 2

DATE	PROCEEDINGS
1974	
May 7	SUBMITTED ON PLTF'S MOTION TO DISMISS COUNTER-CLAIM OF DEFT. USA.
1926	Deft Dekalb County Georgia's Motion To Dismiss The Amended Complaint, filed. WCO
200	Deft Dekalb County, Georgia's Motion To Strike The Amended Complaint, filed. WCO
203	Brief of deft Dekalb County, Georgia in support of motions to dismiss and strike the amended complaint, filed. WCO
207	RESPONSIVE PLEADINGS of Dekalb County, Georgia & The Chairman and Members of The Board of Commissioners of Roads & Revenues of Dekalb County to pltf's 1st Amended Complaint, with JURY DEMAND, filed. WCO
212	RESPONSIVE PLEADINGS of H. F. Manget to pltf's 1st Amended Complaint, with JURY DEMAND, filed. WCO
216 10	Pltf's Brief in response to Dekalb County's motions to dismiss & strike the amended complaint, filed. WCO
223 June 27	ORDER filed - GRANTING U S's motion to consolidate case with C.A. 19293 for discovery purposes but deferring ruling on consolidation for trial purposes until the pretrial hearing; DENYING DeKalb Co's motion to strike portions of pltf's complaint; GRANTING DeKalb Co's motion to dismiss pltf's complaint as to claims of negligence, nuisance & for breach of contract; GRANTING pltf's motion to dismiss the counterclaim of U S. (copy to counsel, 6/28) U S's cross-claims still pending against DeKalb Co defts.
X	
237 JULY 3	Motion of Southeast Machinery, Inc., Machinery Buyers Corp. and Fireman's Fund Insurance Company to vacate, set aside, alter and amend the orders entered on June 27, 1974 and for reconsiderat rehearing and new trial with memo, filed.
243 12	Brief of Dekalb Co., Ga. in opposition to the motions of Southeast Machiner, Inc., Machinery Buyers Corp., & Fireman's Fund Ins.,Co. to set aside, Vacate, Amend & alter the orders of for reconsiderati rehearing, and new trial on the orders entered on 6-27-74,filed.
15	Response to pltf's 2nd request for admission addressed to deft. USA, filed.
246 22	Supplemental brief of DeKalb Co, Ga in opposition to various motions filed by Southeast Machinery, Inc., et al, with attachment, filed.
29	SUBMITTED ON DEFTS' SOUTHEAST MACHINERY, INC., MACHINERY BUYERS CORP., AND FIREMAN'S FUND INSURANCE CO'S MOTION TO VACATE, SET ASIDE, ALTER AND AMEND THE ORDERS ENTERED 6/27/74 AND FOR RECONSIDERATION, REHEARING AND NEW TRIAL.
31	Deft USA's request to produce & permit inspection and copying, filed. In 19293 (Orig & Dup Req) WCO
	Deft USA's 3rd interrogs. to pltfs' Mirse, filed. IN 19293 (Orig & Dup Req) WCO
Aug. 1	Southeast Machinery, Inc., Machinery Buyers Corp. & Fireman's Fund Insurance Co's notice to take depositions,filed. WCO
	Marshal's return of service as to William A. Williams on 2-21-74; as to Horis A. Ward, A.C. Guhl, Hon. MarionsGuess, Jr., Mrs. Mary Jones, Cal Sandman & T. M. Callaway, Jr. all on 2-22-74; as to Robert J. Morris on 2-23-74; as to Hoke Clayton Smith on 6-25-74; return unexecuted as to W. M. Coolidge, filed. WCO
2	Defts' Supplemental Notice to Take Depositions w/exhibit A, filed
X D.	[illegible] of close of Case

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF | DEFENDANT | DOCKET NO. | PAGE

DATE 1974	PROCEEDINGS
AUG. 5	Deft. U.S.A. answers to pltf. Mirees' 2nd. interrogs., filed.
19	Deft USA'S memorandum in support of the motion of Southeast Machinery, Inc., Machinery Buyers Corp., & Fireman's Fund Ins. Co. to vacate, set aside, alter and amend the orders of 6/21/74 and for reconsideration, rehearing and new trial, filed. WCO
20	Response of Machinery Buyers Corp., Southeast Machinery, Inc., & Fireman's Fund Insurance Co.' to the request to produce and permit inspection and copying of the USA, filed. (Orig. & Dup. to WCO
27	United States' ANSWERS to the Miree pltfs' 3rd interrog., filed. To WCO
Sept. 4	Deft's request for production of documents, filed. WCO
247	[illegible]
	[illegible] the Clerk is directed to enter Final Judg. dismissing DeKalb Co. from this case, filed.(c. counsel)
273	JUDGMENT filed and entered that the pltf. take nothing, that the action be dismissed as to deft. DeKalb County and that the cost of action be taxed upon final judg. of all defts.(c. counsel)
274 Oct. 2	ORDER amending Final Judgment excluding H. F. Manget, Jr. from the entry of Final Judgment, so that H. F. Manget, Jr. remains as a party defendant, filed.(c. counsel)
277	$250.00 APPEAL BOND, filed.
276	Pltf's NOTICE OF APPEAL, filed. (Copy Counsel & certified copy of notice & docket sheet to USCA 10/7)
10	Deposition of HENRY F. MANGET, JR. Partial filed (in 19293)
16	Deft, U. S. A.'s Motion for Summary Judgment w/memorandum and exhibits, filed. Consent Order by Clerk extending time through November 20, 1974 for pltf to respond to deft, U. S. A.'s Motion for Partial Summary Judgment, filed. (CF)
18	Pltf's response to deft, United States of America's Request for Production of Documents, w/attachments, filed. (Copies requested)
Nov. 1	Deft. U.S.A.'s interrogs to defts Machinery Buyers Corp and Southeast Machinery, Inc, filed.
285	Joint designation of record on appeal & stipulation of parties that parts of the record on appeal be retained in the District Court, filed.
286 12	ORDER to forward copies on appeal in lieu of originals, filed. c. counsel.

ATTEST: A TRUE COPY
CERTIFIED THIS
11-13-74
Leon H. Carter, Clerk
By: Lonan Nalty
Deputy Clerk

BEST COPY AVAILABLE

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

[5] Filed: Jan. 8, 1974

FIREMAN'S FUND INSURANCE COMPANY,

Plaintiff,

v.

UNITED STATES OF AMERICA;
DEKALB COUNTY, GEORGIA;
A. C. GUHL, in his capacity as Chairman of the Board of Commissioners of Roads and Revenues of DeKalb County;
WILLIAM A. WILLIAMS, in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
T. M. CALLAWAY, JR., in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
HOKE CLAYTON SMITH, in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
ROBERT J. MORRIS, in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
HORIS A. WARD, in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
W. M. COOLIDGE, in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County; and
H. F. MANGET, individually and as Airport Manager of the DeKalb-Peachtree Airport,

Defendants.

CIVIL ACTION NO. C-7424-A

[6]

COMPLAINT

Comes now plaintiff and as its first claim for relief respectfully shows to the Court the following:

COUNT ONE

1.

Plaintiff Fireman's Fund Insurance Company is a corporation incorporated under the laws of California, with its principal office and place of business in San Francisco, California. Said plaintiff is not a citizen of Georgia.

2.

(a) Defendant United States of America is subject to the jurisdiction of this Court and may be served with the complaint and summons as provided by law.

(b) Defendant DeKalb County, Georgia is a political subdivision of the State of Georgia and is located within this District. Said defendant is subject to the jurisdiction of this Court and may be served with the complaint and summons as provided by law.

(c) Defendant A. C. Guhl is sued in his capacity as Chairman of the Board of Commissioners of Roads and Revenues of DeKalb County. Said defendant is a citizen of Georgia and resides within this District, and said defendant is subject to the jurisdiction of this Court and may be served with the complaint and summons as provided by law.

(d) Defendant William A. Williams is sued in his capacity as a Member of the Board of Commissioners of Roads and Revenues of DeKalb County, Georgia. Said defendant is a citizen of Georgia and resides within this District, and

said defendant is subject to the jurisdiction of this Court and may be served with the complaint and summons as provided by law.

(e) Defendant T. M. Callaway, Jr. is sued in his capacity as a Member of the Board of Commissioners of [7] Roads and Revenues of DeKalb County, Georgia. Said defendant is a citizen of Georgia and resides in this District, and said defendant is subject to the jurisdiction of this Court and may be served with the complaint and summons as provided by law.

(f) Defendant Hoke Clayton Smith is sued in his capacity as a Member of the Board of Commissioners of Roads and Revenues of DeKalb County, Georgia. Said defendant is a citizen of Georgia and resides in this District, and said defendant is subject to the jurisdiction of this Court and may be served with the complaint and summons as provided by law.

(g) Defendant Robert J. Morris is sued in his capacity as a Member of the Board of Commissioners of Roads and Revenues of DeKalb County, Georgia. Said defendant is a citizen of Georgia and resides in this District, and said defendant is subject to the jurisdiction of this Court and may be served with the complaint and summons as provided by law.

(h) Defendant Horis A. Ward is sued in his capacity as a Member of the Board of Commissioners of Roads and Revenues of DeKalb County, Georgia. Said defendant is a citizen of Georgia and resides in this District, and said defendant is subject to the jurisdiction of this Court and may be served with the complaint and summons as provided by law.

[7]

(i) Defendant W. M. Coolidge is sued in his capacity as a Member of the Board of Commissioners of Roads and Revenues of DeKalb County, Georgia. Said defendant is a citizen of Georgia and resides in this District, and said defendant is subject to the jurisdiction of this Court and may be served with the complaint and summons as provided by law.

(j) Defendant H. F. Manget is sued individually and in his capacity as DeKalb County's Airport Manager of the DeKalb-Peachtree Airport. Said defendant is a citizen of Georgia and resides in this District, and said defendant is subject to the jurisdiction of this Court and may be served with the complaint and summons as provided by law.

[8]

3.

(a) With respect to defendant United States of America, this action is brought pursuant to the Federal Tort Claims Act, 28 U.S.C. §1346(b). More than six months prior hereto, plaintiff and its insured submitted an appropriate administrative claim to defendant United States of America with respect to the damages sought in this action, and said defendant failed to make a final disposition of said claim within six months thereafter. Plaintiff therefore has exhausted its administrative remedies in accordance with 28 U.S.C. §2675, and this action is brought within the period of time specified in 28 U.S.C. §2401(a). Jurisdiction of this action in this Court against defendant United States of America is properly founded upon the Federal Tort Claims Act and other applicable laws.

(b) With respect to the remaining defendants, there is complete diversity of citizenship and the value of the

[9]

matter in controversy, exclusive of interest and costs, exceeds the sum of $10,000.00. Jurisdiction of this action in this Court with respect to the remaining defendants is therefore properly founded upon 28 U.S.C. §1332 and §1391. All of the remaining defendants were placed on adequate and sufficient notice of the claims asserted herein, prior to the filing of this action.

4.

Hereinafter defendant United States of America will sometimes be referred to as "defendant F.A.A.," and the remaining defendants will sometimes be referred to as the "County defendants."

5.

On February 26, 1973, at approximately 10:12 a.m., E.S.T., a Learjet Model 24 aircraft, N-454RN, owned by Southeast Machinery, Inc., was in the process of taking off from Runway 20L at DeKalb-Peachtree Airport. Immediately after becoming airborne, and while within the boundaries of the airport [9] and at an altitude of approximately 400-500 feet, the turbine or jet engines of said aircraft ingested a large number of starlings or similar birds, resulting in the sudden loss of power in both engines and the crash and total destruction of said aircraft and the death of all seven persons aboard the aircraft. The sole physical cause of said crash was loss of engine power and engine failure in both turbine or jet engines, resulting directly and solely from the ingestion of a large number of starlings or similar birds in both engines.

6.

The aircraft in question was a Learjet, Model 24, twin

engine turbine-powered jet airplane manufactured by Gates Learjet Corporation, and the engines of said airplane were Model CJ-610-4 turbine-powered jet engines manufactured by General Electric Company.

7.

Shortly prior to the takeoff of the airplane, one of the members of the flight crew of the airplane had filed an IFR (Instrument Flight Rules) flight plan with and had received a weather briefing from the Atlanta Flight Service Station with respect to the proposed flight of the airplane from DeKalb-Peachtree Airport to a destination in Florida. At no time during said procedures did any personnel of the Atlanta Flight Service Station in any way inform, advise, suggest, indicate or intimate to the flight crew that there was or might be any type of bird hazard at DeKalb-Peachtree Airport, and the personnel of the Atlanta Flight Service Station did not in any way warn the flight crew of any bird hazard, bird problem or bird-attracting open garbage dump at said Airport.

8.

The Atlanta Flight Service Station is a facility operated, supervised and manned by defendant F.A.A. for the [10] purposes, among other things, of recording and filing flight plans and furnishing pilots with relevant data and information concerning weather, flight conditions and various other matters concerning safety of flight. At and prior to the time of the flight in question, defendant F.A.A. (including personnel of the Atlanta Flight Service Station) had actual knowledge that a bird hazard, bird problem and bird-attracting open garbage dump existed at DeKalb-Peachtree Airport.

9.

Prior to the beginning of the flight in question, and in accordance with Federal Aviation Regulations, the flight crew of the airplane had contacted both the ground control and tower control facilities of defendant F.A.A. at the Airport and had advised defendant F.A.A. of the proposed I.F.R. flight from DeKalb-Peachtree Airport. In response to such communications from the flight crew, the defendant F.A.A. through its ground control and tower control facilities instructed and directed the flight crew to taxi the Learjet to Runway 20L, and cleared the Learjet for takeoff, without any warning, suggestion, advice, indication or intimation to the flight crew that a bird hazard, bird problem or bird-attracting open garbage dump existed at the Airport. At and prior to the time of takeoff, the personnel of defendant F.A.A. who were operating said ground and tower control facilities had actual knowledge that a bird hazard, bird problem and bird-attracting open garbage dump existed at the Airport.

10.

Specifically, the radio communications between the flight crew and the ground and tower control facilities of defendant F.A.A. were in pertinent part as follows:

TIME	:	1451
N45 4RN	:	Ground Learjet four five four Romeo
PDK GC	:	November Lear four five four Romeo November Peachtree Ground
[11]		
N45 4RN	:	Put us on request I F R to ah Miami Beach and we're ready to taxi in about five minutes

PDK GC : Lear four five four R N Roger

TIME : 1453

N454RN : Lear four fifty four R N's I F R to Miami

TIME : 1453

PDK GC : Lear four five four R N Peachtree Ground taxi to runway two zero left wind zero six zero degrees at five altimeter three zero two zero follow the Bonanza approaching from your right front

N454RN : Roger

TIME : 1457

PDK GC : Lear four five four Romeo November clearance

N454RN : Go ahead

PDK GC : Lear four five four Romeo November cleared as filed maintain three thousand expect flight level four one zero within three five miles squawk two zero four one just before departure

N454RN : Roger we're cleared as filed to maintain three expect four one oh in three five miles squawk two zero four one departure nineteen three

PDK GC : Lear four five four Romeo November departure control frequency one one niner point three contact tower one two zero point niner when ready for departure

N454RN : (unintelligible, sounds like er and is probably the last part of the word roger)

TIME : 1459

N454RN : How much a delay for Romeo November sir

PDK TWR : Well your number four for departure

N454RN : Ok how much a delay for all of us

PDK TWR : I don't know we gonna get the first one out right away

N454RN : OK

TIME : 1510

PDK TWR : Lear ah four five four Romeo November taxi into position and hold

N454RN : Roger

TIME : 1511

PDK TWR : Lear four five four Romeo November turn ah right heading two five zero for vectors cleared for takeoff

N454RN : Roger

TIME : 1512

PDK TWR : Lear four five four Romeo November it appeared the ah left engine laid a pretty good layer of smoke out of the left side there for approximately ah three or four hundred feet ah over

N454RN : We just hit some birds

PDK TWR : Ah roger ah you retur turning to land

N454RN : Dont' believe we gonna make it

PDK TWR : Can you tell us where your going down

After the crash the remains of many dead starlings or cowbirds or similar birds were found at or near the departure end of Runway 20L, and bird remains and particles of protein matter were found on the airplane windshield and center post and in the airplane engines. Also, immediately prior to and after the crash large flocks of starlings, cowbirds or similar birds were located in and about the Airport boundaries and the adjacent garbage dump operated by the County defendants.

12.

Prior to the crash, both the defendant F.A.A. and the County defendants had actual knowledge that birds could be ingested into turbine or jet engines, including Learjet engines, and that turbine or jet engine bird ingestion could cause a loss of engine power and an engine failure and a crash. Prior to the crash, the defendant F.A.A. and the County defendants also had actual knowledge that a dangerous bird hazard, bird problem and bird-attracting open garbage dump existed at the Airport.

13.

This action is brought by plaintiff to recover the damages sustained as a result of the aforesaid total destruction of the Learjet airplane. Immediately prior to the crash the fair and reasonable market value of the Learjet airplane was $565,000.00, and immediately after the crash the airplane was totally worthless, except for salvage. The reasonable and fair market value of the salvage remains of said aircraft was $15,568.00. Plaintiff therefore claims as its damages the sum of $549,432.00.

14.

Prior to the crash plaintiff Fireman's Fund Insurance Company had issued to its insured, Southeast Machinery, Inc., a policy of insurance whereby the Learjet airplane in question was insured against the peril of property damage, including total loss [13] and destruction. As a result of the aforesaid loss of the insured airplane and pursuant to said insurance policy Fireman's Fund Insurance Company prior hereto paid to Southeast Machinery, Inc. the sum of $565,000.00, representing the total amount of the loss, and Southeast Machinery, Inc. assigned to plaintiff the

right to sue and cause of action for the loss of said airplane. As a result of said payment under said policy for said loss, Fireman's Fund Insurance Company became subrogated by operation of law to the rights of Southeast Machinery, Inc. against the defendants herein, in the amount of $549,432.00. Fireman's Fund Insurance Company, both as subrogee and as assignee, therefore is the proper party plaintiff in this case.

15.

As indicated above, the flight crew of the aircraft had prior to takeoff filed an Instrument Flight Rules (I.F.R.) flight plan with the defendant F.A.A. for a proposed flight from DeKalb-Peachtree Airport to Miami, Florida, with a proposed departure time of 9:50 a.m., E.S.T., and a proposed en route altitude of 41,000 feet (Flight Level 410). This flight plan also specified the type of aircraft (Learjet Model 24) and listed five passengers on board, an estimated en route flight time of one hour ten minutes, and fuel on board for two hours thirty minutes. The flight crew received from defendant F.A.A. the I.F.R. clearance as filed, and the flight was directed to and cleared for takeoff from Runway 20L by the defendant F.A.A. at 10:10.40 a.m., E.S.T.

16.

The weather at and prior to takeoff was overcast, with a ceiling of no more than 500 feet. Visibility was restricted by the overcast sky and low ceiling and by fog and smoke, and the wind, which was blowing from 060 degrees at least at four knots, was causing fog, smoke and haze to drift across the generally North to South runway (20L) in a generally East to West direction.

[14]

17.

The takeoff runway, designated as Runway 20L, was 5,000 feet in length. The open garbage dump in question is located in a [14] depression or low area approximately midway down the runway and many hundreds of feet east of the boundary of the runway. The open garbage dump is surrounded by trees and other foliage and is not visible to a person standing on Runway 20L or to a person in the flight deck or cockpit of a Learjet Model 24 aircraft located on Runway 20L. Specifically, the open garbage dump was not visible to the flight crew of the airplane in question. The open garbage dump was, however, visible to the air traffic control specialists employed by defendant F.A.A. and located in the air traffic control tower maintained and operated by defendant F.A.A. Also, the airplane in question was at all times visible to said air traffic control specialists.

18.

At the time of and prior to the flight in question the flight crew of the airplane was not aware of and had no knowledge of the existence of a bird hazard, bird problem or bird-attracting open garbage dump at the Airport. Moreover, because of instrument weather conditions, restrictions to visibility, length of the runway and location of the open garbage dump in relation to the runway, and because of the flight crew's necessary attention to required cockpit duties during the I.F.R. takeoff, and because of the sharp nose-up attitude of the jet airplane after becoming airborne, it was not possible for the flight crew of the airplane to learn of or observe any birds or bird hazards prior to the midair impact with and engine

[15]

ingestion of the birds, and it was not possible for the flight crew to take any in-flight actions to avoid collision with the birds.

19.

At and prior to takeoff of the airplane, however, the defendants herein knew that a bird hazard, bird problem and bird-attracting open garbage dump existed at the Airport, and that extremely large flocks of starlings and similar types of birds were located within the Airport boundaries and in dangerously [15] close proximity to Runway 20L. Despite this knowledge, the defendants herein failed to warn the flight crew of the airplane of the bird hazard, bird problem and bird-attracting open garbage dump.

20.

The United States of America, through the Department of Transportation and the Administrator of the F.A.A., has been directed by Congress in the Federal Aviation Act of 1958, as amended, to assume responsibility as follows:

> "to develop plans for and formulate policy with respect to the use of the navigable airspace; and assign by rule, regulation, or order the use of the navigable airspace under such terms, conditions and limitations as he may deem necessary in order to insure the safety of aircraft and the efficient utilization of such airspace. He may modify or revoke such assignment when required in the public interest." 49 §1348(a).

21.

The United States of America, through the Department of Transportation and the Administrator of the F.A.A.,

is further authorized by Congress in said Act to assume responsibility as follows:

> "(1) to acquire, establish, and improve air-navigation facilities wherever necessary;
>
> (2) to operate and maintain such air-navigation facilities; . . .
>
> (4) to provide necessary facilities and personnel for the regulation and protection of air traffic." 48 U.S.C. §1348(b).

22.

The United States of America, through the Department of Transportation and the Administrator of the F.A.A., is further directed by Congress in said Act to assume responsibility as follows:

> "to prescribe air traffic rules and regulations governing the flight of aircraft, for the navigation, protection, and identification of aircraft, for the protection of persons and property on the ground, and for the efficient utilization of the navigable airspace, including rules as to safe altitudes of flight and rules for the prevention of collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects." 49 U.S.C. §1348(c).

23.

The aforementioned directions to and placement of responsibility on the United States of America are pursuant to the Congressional determination found at 49 U.S.C. §1303 that the United States of America through the Administrator of the F.A.A. shall consider the following as being in the public interest:

> "(a) The regulation of air commerce in such manner as to best promote its development and safety and fulfill the requirements of national defense;
>
> (b) The promotion, encouragement, and development of civil aeronautics;
>
> (c) The control of the use of the navigable airspace of the United States and the regulation of both civil and military operations in such airspace in the interest of safety and efficiency of both;
>
> (d) The consolidation of research and development with respect to air navigation facilities, as well as the installation and operation thereof;
>
> (e) The development and operation of a common system of air traffic control and navigation for both military and civil aircraft."

24.

The United States of America, through the Department of Transportation and the Administrator of the F.A.A., is further given the duty by Congress in said Act as follows:

> "to promote safety of flight of civil aircraft in air commerce by prescribing and revising from time to time: . . .
>
> (6) Such reasonable rules and regulations, or minimum standards, governing other practices, methods, and procedure, as the Administrator may find necessary to provide adequately for . . . safety in air commerce." 49 U.S.C. §1421(a)(6).

25.

Pursuant to the aforesaid authority and directions from Congress the United States of America administers air

traffic control of civil air operations within United States airspace; operates F.A.A. air route traffic control centers, airport traffic control towers, flight service stations, and related communications equipment required for control of air traffic; and collects and disseminates information relative to civil aeronautics and safety of flight.

[17] 26.

Also pursuant to said Congressional authority and directions the United States of America has established as being necessary and operates air navigation facilities, including an Airport Traffic Control Tower (ATCT) at DeKalb-Peachtree Airport and a flight service station in Fulton County, Georgia, which flight service station serves the geographical area in which DeKalb-Peachtree Airport is located.

27.

An ATCT is a central operations facility in the terminal air traffic control system, consisting of a tower cab structure, including an associated IFR room if radar equipped, using air/ground communications and/or radar, visual signaling and other devices, to provide safe and expeditious movement of air and ground traffic.

28.

The ATCT at DeKalb-Peachtree Airport is operated by the F.A.A. and is "responsible for the safe, orderly and expeditious flow of air traffic in the vicinity of an [the] Airport." 30 F.R. 3395, as amended; 16 F.R. 2975, 2979, revised 19 F.R. 2098, §24.

29.

Said ATCT is manned by personnel (employed by the

United States of America) "who are responsible for the safe and orderly flow of air traffic in the vicinity of the Airport." Their principal duties are as follows:

(a) "To issue instructions to pilots for taxiing, take-off, approach for landing, and landing of aircraft.

(b) "To inform pilots regarding field and weather conditions, air navigational facilities, emergency landing areas, restrictions to flight, regulations, and other matters which may be of assistance to the pilot.

(c) "To relay messages between pilots, airline operations offices, Air Route Traffic Control Centers, Weather Bureau offices, Communications Stations and other appropriate agencies concerning the operation, dispatch, and control of aircraft.

(d) "To invoke emergency procedures when any emergency occurs or appears likely to occur to aircraft under tower control.

(e) "When equipped with airport surveillance and precision approach radar, to monitor [18] aircraft arriving and departing from an airport on instruments, and, in an emergency or upon request, issuing ground controlled approach instructions (GCA) for a let-down." 16 F.R. 2974, 2979, revised 19 F.R. 2098, §24.

30.

Pursuant to the authority and directions of Congress, the United States of America, through the Department of Transportation and the F.A.A., prior to the crash in question had issued Advisory Circular No. 150/5200-3A, dated March 2, 1972, entitled "Bird Hazards to Aircraft,"

in which the United States of America through said agencies stated in part as follows:

> "Migratory birds, particularly waterfowl, are a hazard to aircraft due to their size and weight. In recognition of this potential hazard, F.A.A. Air Traffic Control and Flight Service Station facilities issue advisory information on bird activities when they are reported or when they have knowledge of such activities. Information given to pilots includes the position, species or size of bird if known, and their course and altitude."

31.

The defendant F.A.A. in said Advisory Circular also admitted that the birds of greatest potential hazard to aircraft because of size, abundance, or habit of flying in dense flocks, include starlings; that birds of these species are considered particularly hazardous during spring and fall migrations and when they are concentrated in wintering areas; and that at some airports there are large flocks of certain birds which could be a problem during certain seasons. DeKalb-Peachtree Airport is not named or referred to in said Advisory Circular.

32.

To cope with these admitted flight hazards, the Advisory Circular states that the United States of America, through the F.A.A., is operating as follows:

> "F.A.A. Air Traffic Control and Flight Service Station facilities coordinate with airport management for either appropriate alerting action by a Notice to Airmen when flocks of birds are noted to remain in the airport vicinity or for possible closing by a Notice to Airmen when flocks roost on runways."

[19]

33.

The Federal Government personnel providing terminal air traffic control services at airports, including DeKalb-Peachtree Airport, are required by the United States of America to be familiar with the provisions of the Terminal Air Traffic Control Manual, 7110.8, one of the air traffic control manuals referred to in Part 65 of the Federal Aviation Regulations, in which Manual are set forth the following duties and responsibilities of air traffic control personnel:

> "If you observe or are informed of any condition which affects the safe use of a landing area:
>
> (a) Relay the information to the airport manager concerned.
>
> (b) Issue a Notice to Airmen publicizing an unsafe condition if you are unable to contact the airport manager (of if there is no airport manager designated) and then inform the manager as soon as practicable. . . ."

"122. BIRD ACTIVITY
ADDNL SVC

"a. Issue advisory information on the position and, if known, species or size of birds, and their course of flight and altitude if you believe that the safety of flight in that area may be affected. Do this for at least 15 minutes after receipt of such information from pilots or from adjacent facilities unless visual observation or subsequent reports reveal the activity is no longer a factor."

"1552. BIRD ACTIVITY INFORMATION

"a. Issue advisory information on pilot-reported or radar-observed and pilot-verified bird activity.

Include position, species or size of birds, if known, course of flight and altitude. (E)

Phraseology:

FLOCK OF (Species, if known)/(size, if known) BIRDS, (number) O'CLOCK (number of miles) MILES (direction) BOUND:

LAST REPORTED AT (altitude, as determined from pilot report).

or

ALTITUDE UNKNOWN.

FLOCK OF (species, if known)/(size, if known) BIRDS (direction) BOUND ALONG (flyway or geographical route):

LAST REPORTED AT (altitude, as determined from pilot report).

or

ALTITUDE UNKNOWN.

FLOCK OF/NUMEROUS FLOCKS (species, if known)/(size, if known) BIRDS, VICINITY (location):

[20] LAST REPORTED AT (altitude, as determined from pilot report).

or

ALTITUDE UNKNOWN.

b. Relay bird activity information to adjacent facilities and to FSS's whenever it appears it will become a factor in their areas."

34.

The United States of America, through its said agencies and their predecessors, have known about bird hazards to

aircraft at least since the 1940's, when the F.A.A. published a report of the collection and compilation of detailed statistics on the collision of aircraft with birds, which report was admitted into evidence in *Rapp v. Eastern Air Lines, Inc., U.S.A., et al.*, 264 F. Supp. 673 (E.D. Pa. 1967), and which report showed 1946 statistics on bird strikes by aircraft, including there being more than one such collision per day during this early aviation period.

35.

The said Federal Court having before it the Lockheed Electra ingestion of birds at Boston in 1960, held the United States of America negligent as follows:

"5. In failing to prescribe in the type certificate issued for the Electra that the plane could not be used where birds were known to congregate when the C.A.B. knew or should have known that the aircraft was capable of ingesting birds on take-off with resulting loss of power output and which was a serious hazard to a plane, the C. A. B. was negligent.

"6. The Government which had the duty to clear planes for take-off from Logan Airport was negligent in failing to devise a system whereby planes especially of the Electra type would not be cleared for take-off where birds were a known hazard without checking to discover whether birds were at the time of take-off of sufficient quantity to be a menace.

"7. The Government was negligent in failing to require the Massachusetts Port Authority at Logan Airport to remove the attractions to birds on the airport surface by filling in the ponds, closing the dumps, cutting down the phragmites, and prohibiting the dumping of garbage and food particles on the airport surface and in failing to take adequate measures to

insure that birds would not act as airport hazards when planes were taking off. We conclude thusly in light of the fact that the same governmental agency was responsible for certification for clearing planes for take-off and for requiring airports which receive federal assistance to mitigate existing airport hazards." 264 F. Supp. 681.

[21] 36.

DeKalb-Peachtree Airport is located within the boundaries of DeKalb County on land owned by the County, and said Airport is owned, operated and managed and maintained by the County defendants. Said Airport has paved runways and airport hangars, servicing and parking facilities, a control tower with radio facilities, an instrument landing system control center, and access to other radio and navigational aids. The Airport is operated by the County defendants for the public welfare and benefit of the citizens of the United States of America (including plaintiff and plaintiff's insured) and is operated under the jurisdiction of the Federal Aviation Administration.

37.

DeKalb County, Georgia acquired the DeKalb-Peachtree Airport by way of quit-claim deed from the General Services Administration of the United States of America on or about February 15, 1960. The County's personnel operated the control tower at the DeKalb-Peachtree Airport from March, 1959, until January, 1963, when they were replaced by Federal Aviation Administration Air Traffic personnel. On February 26, 1973, the date of the fatal crash complained of herein, the air traffic control tower was operated by Federal Aviation Administration Air Traffic Control personnel.

38.

Beginning in 1962, a portion of the land constituting the Airport site was used by DeKalb County as a garbage dump. In 1964 the dump was closed and remained closed until March, 1966, when it was re-opened. Since that time DeKalb County was utilized the Airport site for dumping garbage.

39.

Employees of DeKalb County at the Airport have observed and reported a significant increase in the number of birds on or in the vicinity of the Airport following the utilization of the Airport site for garbage disposal.

[22] 40.

On and prior to February 26, 1973, DeKalb County had been using the Airport site as an open garbage dump where large quantities of raw garbage, refuse, offal, filth, waste and trash by the truck loads were dumped and deposited upon the Airport site numerous times during each day by personnel and vehicles controlled by said DeKalb County through its Sanitation Department and under the ultimate direction and control of the County defendants.

41.

The said untreated raw garbage, refuse, trash, offal, filth and other waste material deposited by the County defendants as aforesaid created a large area constituting an attraction to birds and causing large flocks of birds to congregate about the Airport, the runways, ends of runways and other areas within the Airport boundaries. The attractiveness of said open garbage dump to birds was

increased by the failure of the County defendants to remove trees, undergrowth and high grass from the area of the open garbage dump and along the runways, which foliage provided roosting, nesting and basking areas for the large flocks of birds attracted to the garbage dump. Said birds at certain times remained, walked and ran upon said runways and adjacent grass areas at the sides and ends of the runways, and congregated in the numerous trees on and about the Airport area. Said birds when located upon the Airport grounds often flew aloft in large flocks many times each day as aircraft would take off, approach, land or fly near said Airport, and said birds constituted a continuous hazard at said Airport to the safety of aircraft and to the safety and lives of the crews and passengers therein and to persons residing and located upon the ground in the vicinity of said Airport.

42.

All of the foregoing was known to the County defendants and to defendant F.A.A. at and prior to the time of the crash involved in this lawsuit.

[23] 43.

The United States of America, by and through the Department of Transportation, Federal Aviation Administration, has the responsibility for the administration of the Federal Airport and Airway Development Act of 1970 and its predecessor, the Federal Airport Act of 1946. Involved in the administration of the programs was the responsibility of enforcing the provisions of the various Grant Agreements issued in accordance with the provisions of these Acts. These Grant Agreements included provisions under which the airport owners maintain and

operate airports in accordance with the standards set forth in these Agreements.

44.

In addition, the United States of America has the responsibility for and jurisdiction over the safety of DeKalb-Peachtree Airport to the extent that it was the duty of the United States of America, as a condition precedent to the granting of funds for Airport development, to receive assurances from the owners of the Airport that airport hazards would be mitigated.

45.

Beginning in June, 1962, the Federal Government entered into six (6) Grant Agreements with DeKalb County, pursuant to which at least $1,025,224.06 was paid to the County for the purpose of assisting the County in the improvement and development of DeKalb-Peachtree Airport, including the construction of Runway 20L-2R which was begun in 1966 and completed in 1968.

46.

Associated with the various Grant Agreements is an airport layout plan developed by DeKalb County and approved by the Federal Aviation Administration which graphically illustrates the development and proposed development of the airport facilities and the use of the land included within the airport boundaries. Such use does not include an open garbage dump or any other dumping ground for garbage.

[24] 47.

Prior to the crash in question, the United States of America, through the Federal Aviation Administration,

recognized that the existence of the open garbage dump constituted an attraction to birds of various species, and that birds constituted a definite hazard for aircraft taking off and landing at the Airport.

48.

From March 9, 1970, through February 14, 1972, the Federal Aviation Administration communicated with officials of DeKalb County, both by letter and by conference, relative to alleviation of the bird hazard caused by the existence of the open garbage dump on the airport site. In February, 1971, the F.A.A. was advised by DeKalb County that the dump would be closed by August, 1972, but DeKalb County failed to keep its word in this regard. Subsequent to said date of February 14, 1972, and for more than one (1) year prior to the date of said fatal crash on February 26, 1973, no further communications, either by letter or by conference, were had by the Federal Aviation Administration with officials of DeKalb County directed toward the alleviation of the bird hazard.

49.

Said letters and conferences were of no avail, and both the defendant F.A.A. and the County defendants negligently failed to remove or reduce the bird hazard at the Airport.

50.

On the 27th day of June, 1967, the Federal Aviation Administration and the United States of America entered into one of a series of similar Agreements with DeKalb County by and through the Chairman of the Board of Commissioners of Roads and Revenues.

51.

Said Agreements in pertinent part provided as follows:

"The Sponsor [DeKalb County] will keep up to date at all times an airport layout plan . . . Such airport layout plan, and each amendment, revision, or modification thereof, shall be subject to the approval of the F.A.A., which approval shall be [25] evidenced by the signature of a duly authorized representative of the F.A.A. on the face of the airport layout plan. The Sponsor will not make or permit the making of any changes or alterations in the Airport or any of its facilities other than in conformity with the airport layout plan as so approved by the F.A.A., if such changes or alterations might adversely affect the safety, utility, or efficiency of the Airport."

52.

The defendant F.A.A. negligently allowed changes in the airport layout, contrary to the official layout plan, when they knew of the existence of said sanitary landfill or garbage dump, and when the defendant F.A.A. had the power and jurisdiction to have mitigated said Airport hazard.

53.

With further reference to said Agreement, as part of the consideration for the sums paid by the United States of America to DeKalb County, said DeKalb County, as Sponsor, agreed as follows:

"These covenants shall remain in full force and effect throughout the useful life of the facilities developed under this Project, . . ." (Project Application, Sponsor's Assurances, Paragraph 1).

and

"The Sponsor will operate the Airport as such for the

use and benefit of the public. . . . The Sponsor may prohibit or limit any given type, kind or class of aeronautical use of the Airport if such action is necessary for the safe operation of the Airport or necessary to serve the civil aviation needs of the public." (Project Application, Sponsor's Assurances, Paragraph 2).

and

"The Sponsor will operate and maintain in a safe and serviceable condition the Airport and all facilities thereon and connected therewith which are necessary to serve the aeronautical users of the Airport other than facilities owned or controlled by the United States, and will not permit any activity thereon which would interfere with its use for airport purposes." (Project Application, Sponsor's Assurances, Paragraph 6).

and

"In addition, the Sponsor will not erect or permit the erection of any permanent structure or facility which would interfere materially with the use, operation, or future development of the [26] Airport, in any portion of a runway approach area in which the Sponsor has acquired, or may hereafter acquire property interests permitting it to so control the use made of the surface of the land." (Project Application, Sponsor's Assurances, Paragraph 7).

and

". . . The Sponsor will not make or permit the making of any changes or alterations in the Airport or any of its facilities other than in conformity with the airport layout plan as so approved by the F.A.A., if such changes or alterations might adversely affect the safety, utility, or efficiency of the Airport." (Project Application, Sponsor's Assurances, Paragraph 12).

and

"Insofar as is within its power and to the extent reasonable, the Sponsor will take action to restrict the

use of land adjacent to or in the immediate vicinity of the Airport to activities and purposes compatible with normal airport operations including landing and take-off of aircraft." (Project Application, Sponsor's Assurances, Paragraph 13).

54.

The County defendants violated the provisions of said contract by willfully permitting the existence of an open garbage dump and bird hazard on the Airport site and adjacent to Runway 20L. Said contract having been made for the benefit of the public plaintiff and its insured were third party beneficiaries of said contract and any other contracts and agreements similarly made between DeKalb County and the United States of America. The County defendants are liable for breach of said contract and any other similar contracts and are liable for the damages sustained by plaintiffs resulting from the negligence and recklessness of the County defendants growing out of the breach of said contract.

55.

By reason of the existence of said open garbage dump prior to and on February 26, 1973, the operation of the Airport by the County defendants and defendant F.A.A. constituted a public and private nuisance and a hazard to public safety.

56.

The maintenance of said open garbage dump at said DeKalb-Peachtree Airport constituted an airport hazard as [27] defined in 49 U.S.C. §1101, 49 U.S.C. §1711, and was a violation of 49 U.S.C. §1110 (3) and 49 U.S.C. §1718 (3).

57.

The United States of America, by and through its agents and employees, was guilty of negligence proximately causing and contributing to the damages of plaintiff in the following particulars:

(a) In failing to require DeKalb County to remove and mitigate the Airport bird hazard by reason of the dumping of garbage on DeKalb-Peachtree Airport, the same being negligence per se and negligence as a matter of fact;

(b) In allowing jet propelled aircraft to operate in and out of DeKalb-Peachtree Airport when birds were a known hazard by reason of the existence of the open garbage dump;

(c) In clearing the Learjet airplane for takeoff on February 26, 1973, in spite of the known existence of numerous birds which were located in the vicinity of runway 20L at DeKalb-Peachtree Airport;

(d) In failing to give reasonable and adequate notice to pilots and the flight crew of the Lear Jet of the danger of birds to aircraft at the DeKalb-Peachtree Airport;

(e) In allowing DeKalb County to accomplish a change in the Airport layout plan of DeKalb-Peachtree Airport by establishing and maintaining an open garbage dump thereon, the same being in violation of the airport layout plan which had been previously approved by the United States of America.

58.

The County defendants and their agents, servants and employees, were guilty of breach of contract and negligence arising out of breach of contract with the United

States of America, all of which proximately caused and contributed to the damages of plaintiff, as follows:

[28]

(a) By permitting changes in the DeKalb-Peachtree Airport and its facilities, other than in conformity with the airport layout plan as officially approved by the United States of America, where such changes adversely affected the safety of the Airport;

(b) In operating the DeKalb-Peachtree Airport for the benefit of the public, and in connection therewith failing to prohibit the use of jet propelled aircraft where a portion of the airport was utilized as an open garbage dump attracting large flocks of birds;

(c) In permitting activity at the Airport and facilities thereon which interfered with its use for airport purposes;

(d) In failing to restrict the use of land adjacent to Runway 20L of the Airport to purposes compatible with flight safety and normal operation of the Airport;

(e) In failing to act upon and abide by the specific warning of the United States of America with respect to the hazard created by the open garbage dump and the requests made to remove said dump;

(f) In dumping and depositing untreated garbage, trash, refuse, offal, filth and other waste materials on DeKalb-Peachtree Airport property;

(g) In failing to warn or advise jet aircraft owners and pilots (including plaintiff's insured and the flight crew of the aircraft in question) of the danger created by the flocks of birds located in and about the vicinity of the Airport;

(h) In recklessly and wantonly continuing to use Airport property for an open garbage dump after receiving notice of the bird hazard.

59.

The defendant F.A.A. was also guilty of negligence causing and contributing to plaintiff's damages, in that the Atlanta Flight [29] Service Station personnel and the DeKalb-Peachtree Airport air traffic control tower personnel negligently approved the IFR flight plan filed by the crew of the Learjet and negligently cleared the Learjet for takeoff from Runway 20L, without advising or warning the flight crew of the bird hazard which existed at the airport and in the vicinity of Runway 20L, contrary to the provisions of the Terminal Air Traffic Control Manual referred to in paragraph No. 33, above, and the Advisory Circular referred to in paragraphs Nos. 30, 31 and 32, above, and the provisions of the Federal Register referred to in paragraphs Nos. 28 and 29, above.

60.

The defendant F.A.A., by direction of Congress, is responsible for certification of aircraft as airworthy and for issuing type and production certificates for aircraft, including the Learjet Model 24. The defendant F.A.A. was also guilty of negligence proximately causing and contributing to the damages of plaintiff, as follows:

(a) In issuing a type certificate, production certificate and airworthiness certificate for the Learjet Model 24, including the accident aircraft, without any restrictions as to use of the aircraft in areas of known bird hazards, when defendant F.A.A. knew that the aircraft was capable of ingesting birds and that bird ingestion on takeoff would cause a power loss and a resulting dangerous hazard to the safety of the airplane and all persons aboard the airplane;

(b) In failing to place restrictions on the type certificate, production certificate and airworthiness certificate of the Learjet Model 24, forbidding operation of the aircraft in areas of known bird hazards;

(c) In failing to prohibit operation of Learjet Model 24 aircraft at DeKalb-Peachtree Airport, when defendant F.A.A. knew that a bird hazard existed at said airport; and

[30]

(d) In failing to devise a system or procedure whereby Learjet Model 24 aircraft would not be cleared for takeoff at DeKalb-Peachtree Airport when a bird hazard was known by defendant F.A.A. to exist at said airport, without first determining whether at the time of takeoff birds were present in sufficient quantity to be a menace and hazard to safety of flight.

61.

(a) Georgia Code Section 11-402(2) defines an "airport hazard" as any structure which is hazardous to the use of an airport for the taking off and landing of airplanes.

(b) Georgia Code Section 11-403 declares that an airport hazard endangers the lives and property of users of the airport and is therefore not in the interest of the public health, public safety or general welfare.

(c) Georgia Code Section 11-9902 declares that the violation of any airport zoning regulations shall constitute a misdemeanor.

(d) Section 1(b) of the 1960 DeKalb County Airport Zoning Resolution concerning DeKalb-Peachtree Airport defines an "airport hazard" as any structure or use of land which is "hazardous to such landing or taking off of aircraft."

[30]

(e) Section 5 of the 1960 DeKalb County Airport Zoning Resolution declares that no use may be made of land within any airport approach surface zone, horizontal surface zone, conical surface zone or transitional surface zone at DeKalb-Peachtree Airport, in such manner as to endanger the landing, taking off or manuevering of aircraft.

(f) Section 8 of the 1960 DeKalb County Airport Zoning Resolution declares that no material change shall be made in the use of land at DeKalb-Peachtree Airport and no structure shall be erected, altered, planted or otherwise established in any airport approach surface zone, horizontal surface zone, or conical surface zone unless a permit therefor shall have been applied for and [31] granted. Said Section 8 also declares that no permit shall be granted that would allow the establishment or creation of an airport hazard or permit a non-conforming use or structure to become a greater hazard to air navigation.

(g) Section 14 of said 1960 DeKalb County Airport Zoning Resolution also declares that every violation of said Resolution shall be punishable by fine or imprisonment, or both.

(h) The open garbage dump in question in this case is an airport hazard, as defined by Georgia Code Section 11-402(2) and Section 1(b) of the aforesaid Zoning Resolution. No permit was ever applied for or granted with respect to the establishment and operation of said open garbage dump. The maintenance of said open garbage dump is forbidden by Georgia Code Section 11-403, and by Sections 5 and 8 of said Zoning Resolution. The actions of the County defendants in establishing and operating said open garbage dump violated the aforesaid laws of

Georgia and the aforesaid Zoning Resolution, and constitute negligence per se proximately causing and contributing to plaintiff's damages.

62.

The County defendants were also guilty of negligence per se proximately causing and contributing to plaintiff's damages, in that the County defendants enhanced and increased the bird-attracting nature of said open garbage dump by failing to place a compacted layer of at least six inches of clean earth over all exposed solid waste at the end of each day's operation, and by failing to spread solid waste in uniform layers not over two feet thick, and by failing to compact solid waste prior to covering with earth, and by otherwise operating and maintaining said open garbage dump in violation of the Georgia Solid Waste Management Act (Georgia Code Sections 43-1601, *et. seq.*) and the Rules and regulations of the Georgia Department of Natural Resources, Environmental Protection Division, concerning Solid Waste Management (Rules and Regulations of the State of Georgia, Sections 391-1-1-.1 *et seq.*).

[32] 63.

At all times relevant it was the duty of the County defendants to operate and manage DeKalb-Peachtree Airport in a safe condition. The County defendants were guilty of negligent acts and failures to act and derelictions of duties in their individual, personal capacities and in their official capacities, proximately causing and contributing to plaintiff's damages, in that the County defendants at all times relevant had actual, personal knowledge of the bird hazard and unsafe condition that existed

at the Airport, and in that the County defendants had ample opportunity either to remove the bird hazard and unsafe condition or to prohibit the operation of jet aircraft at the Airport, and in that the County defendants failed to heed the warnings of defendant F.A.A. and others concerning such bird hazard and unsafe condition, and in that the County defendants willfully, wantonly, recklessly and negligently failed either to alleviate the bird hazard and unsafe condition, or to prohibit operation of jet aircraft at the Airport, or to warn the flight crews of jet aircraft of the bird hazard and unsafe condition, or to devise a system, plan or procedure for the warning of jet flight crews of the bird hazard or unsafe condition.

64.

The willful, wanton nature of the negligence and dereliction of duties of the County defendants and the seriousness of the negligence and carelessness of defendant F.A.A. are exemplified by the fact that prior to the fatal crash in question, the County defendants and defendant F.A.A. had received notice of several airplane bird-strike or near bird-strike incidents within the airport boundaries, but despite this knowledge of prior incidents the County defendants and defendant F.A.A. failed to take any action at all to prevent a recurrence of such incidents.

65.

(a) DeKalb-Peachtree Airport is not owned, operated, managed and maintained by the County defendants as a governmental function or enterprise, but, instead, is owned, operated, and [33] maintained and managed by the County defendants as a proprietary or ministerial function or enterprise. In this connection, plaintiff shows

that the County defendants lease substantial portions of the Airport to private companies engaged in commercial operations for profit; that some of such leases are for fixed rental amounts and the remaining leases are for fixed rental amounts plus a percentage of the revenues or income derived by the tenants from their commercial operations; that the revenues thus obtained by the County defendants are not insignificant, but are substantial; and that the Airport is owned, operated, managed and maintained by the County defendants primarily as a source of revenue for the County defendants. In effect, with respect to the ownership, operation, management and maintenance of the Airport, the County defendants act as as a private landlord and not as a governmental entity.

(b) Plaintiff also shows that prior to the date of the crash in question, DeKalb County purchased a policy of liability insurance providing bodily injury liability insurance and property damage liability insurance to the County defendants with respect to the ownership, operation, management and maintenance of DeKalb-Peachtree Airport by the County defendant. Said policy of liability insurance provides coverage to the County defendants with respect to the claims of plaintiff herein, and the property damage liability limits of said insurance coverage applicable to the claims asserted herein are at least $500,000.00. Said policy of insurance also contains a "Waiver of Governmental Immunity" rider which provides as follows:

> "It is agreed that the Company waives any right to deny liability under the policy or to refuse payment within the limits thereof by reason of the nonliability of the insured political subdivision for the

[33]

wrongful or negligent acts of its agents and employees and its immunity from suit as an agency of the State performing governmental functions."

(c) The County defendants are not entitled to the benefit or protection of the doctrine of sovereign immunity with respect to the claims of plaintiff herein.

[34] 66.

Plaintiff also shows that by virtue of the operation of DeKalb-Peachtree Airport by the County defendants under the Uniform Airports Act (Georgia Code Sections 11-204, *et seq.*), and under the Federal Airport and Airway Development Act (49 U.S.C. §§ 1711, *et seq.*) and its predecessor, the Federal Airport Act (49 U.S.C. §§ 1101, *et seq.*) and by virtue of the Grant Agreements and payments of Federal funds referred to earlier in this lawsuit, and by virtue of the application of the provisions of the Georgia Solid Waste Management Act and the Rules and Regulations of the Georgia Department of Natural Resources, Environmental Protection Division (Solid Waste Management) to the facts of this case, and by virtue of the application of the 1960 DeKalb County Airport Zoning Resolution to the facts of this case, an express or implied statutory waiver of the doctrine of sovereign immunity exists with respect to the claims of plaintiff against the County defendants. In the alternative, as a result of the acts and failures to act of the County defendants as alleged herein, and as a result of the acceptance and retention of benefits by the County defendants under the various statutes, rules and regulations and Grant Agreements referred to herein, the County defendants either expressly or impliedly have waived any defense based

[35]

upon the doctrine of sovereign immunity, with respect to the claims of plaintiff herein.

WHEREFORE, plaintiff respectfully prays and demands that process issue as provided by law, requiring defendants to appear and answer this complaint; that plaintiff have judgment against all defendants jointly and severally in the sum of $549,432.00, plus all costs of Court; and that plaintiff have such other and further relief as the Court deems just and proper.

COUNT TWO

As its second and alternative claim for relief, plaintiff respectfully shows to the Court the following:

[35] 1.

Plaintiff incorporates, adopts, repeats and re-alleges herein by reference the allegations of paragraphs numbered 1 through 66 of Count One of this Complaint.

2.

By operating the open garbage dump in the condition and manner described in this complaint, and by managing, maintaining and operating DeKalb-Peachtree Airport in the manner and condition described in this complaint, the County defendants are guilty of maintaining a public and private nuisance injurious to public and private health, person and property.

3.

The maintenance of said nuisance by the County defendants was the proximate and contributing cause of the airplane crash in question, and resulted in special damage to plaintiff and its insured in the sum of $549,432.00.

[35]

WHEREFORE, plaintiff respectfully prays that process issue as provided by law, requiring the County defendants to appear and answer this complaint; that plaintiff have judgment against all of the County defendants jointly and severally in the sum of $549,432.00, plus all costs of Court; and that plaintiff have such other and further relief as the Court deems just and proper.

COUNT THREE

As its third and alternative claim for relief, plaintiff respectfully shows to the Court the following:

1.

Plaintiff incorporates, adopts, repeats and re-alleges herein by reference the allegations of paragraphs number 1 through 66 of Count One of this Complaint.

2.

The County defendants have willfully and wantonly breached, violated and disregarded the provisions, assurances and contractual commitments contained in the aforesaid Grant Agreements [36] and related contracts and documents, all of which Grant Agreements, related contracts and documents were designed and intended to inure to the benefit of plaintiff and its insured, and other members of the public, as third party beneficiaries.

3.

The airplane crash in question and plaintiff's damages were proximately caused by the said breaches of contract by the County defendants, and the County defendants are therefore liable to plaintiff for breach of contract in the sum of $549,432.00.

[51]

WHEREFORE, plaintiff respectfully prays that process issue as provided by law, requiring the County defendants to appear and answer this complaint; that plaintiff have judgment against all of the County defendants jointly and severally in the sum of $549,432.00, plus all costs of Court; and that plaintiff have such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ J. ARTHUR MOZLEY
J. ARTHUR MOZLEY
Attorney for Plaintiff

Of Counsel:

SMITH, COHEN, RINGEL,
KOHLER, MARTIN & LOWE
2400 First National Bank Tower
Atlanta, Georgia 30303

(404) 658-1200

NOTE: Portion of Record Omitted
Filed in Its Original Form

(Caption omitted in printing)

[50] Filed: Feb. 12, 1974

MOTION TO STRIKE

Now come DEKALB COUNTY, GEORGIA, A. C. GUHL, T. M. CALLAWAY, JR., HOKE CLAYTON SMITH, ROBERT J. MORRIS, HORIS [51] A. WARD, and W. M. COOLIDGE, some of the defendants in the

above-styled action, and move the Court, pursuant to Rule 12, Federal Rules of Civil Procedure, for the dismissal of the Complaint, showing the Court as follows:

1.

The Complaint fails to state a claim or a cause of action against Dekalb County, Georgia, upon which relief can be granted.

2.

None of the claims asserted against defendant, Dekalb County, Georgia, can be granted owing to its constitutional governmental immunity which has not been waived, either expressly or impliedly.

3.

More particularly, Dekalb County, Georgia, shows the Court that the Complaint fails to state a claim upon which relief can be granted in the following respects:

(a) In Georgia, no right of action will lie against a county for the creation and, or maintenance of a nuisance;

(b) Plaintiff cannot recover against Dekalb County, Georgia, on a theory of negligence as a matter of law owing to said defendant's constitutional governmental immunity from suit which has not been waived, either expressly or impliedly;

(c) The statutes, ordinances, and regulations recited in the Complaint do not create in plaintiff a cause of action against this defendant;

(d) Dekalb County, Georgia, maintains the Dekalb-Peachtree Airport as a governmental function and, as such, is constitutionally immune from suit by this plaintiff.

(e) There is no right of action in plaintiff, as a third-party beneficiary, on any alleged breach of any Federal Grant Agreements entered [52] into by and between Dekalb County, Georgia, and the Federal Aviation Administration because there is no intent made manifest within such Federal Grant Agreements to confer upon third persons the type of benefit claimed by plaintiff in this action;

(f) Even if the Federal Grant Agreements entered into by and between Dekalb County, Georgia, and the Federal Aviation Administration were intended to benefit the public in the manner claimed by plaintiff, the Complaint shows on its face that these Federal Grant Agreements had not been breached by Dekalb County, Georgia, in operating a sanitary land fill on property contiguous to Dekalb-Peachtree Airport in that the Federal Aviation Administration is alleged to have had knowledge of and thus to have consented to and consciously allowed the maintenance of said land fill;

(g) Even if plaintiff otherwise had the right to sue as a third-party beneficiary for an alleged breach of the Federal Grant Agreements entered into by and between Dekalb County, Georgia, and the Federal Aviation Administration, plaintiff cannot recover the damages sought stemming from the alleged breach because a third-party beneficiary's rights under any contract are no greater than the rights of the parties themselves, and the Federal Grant Agreements which plaintiff alleges to have been breached confers no right on any party to recover the damages sought in the Complaint.

[52]

WHEREFORE, defendant, DEKALB COUNTY, GEORGIA, A. C. GUHL, T. M. CALLAWAY, JR., HOKE CLAYTON SMITH, ROBERT J. MORRIS, HORIS A. WARD, and W. M. COOLIDGE, pray that their Motion be inquired into and sustained and that the Complaint be dismissed as to them.

Respectfully submitted,

HARVEY, WILLARD & ELLIOTT

By: /s/ WENDELL K. WILLARD
WENDELL K. WILLARD

125 Trinity Place
Decatur, Georgia

[53] LONG, WEINBERG, ANSLEY & WHEELER

By: /s/ MEADE BURNS
MEADE BURNS

By: /s/ F. CLAY BUSH
F. CLAY BUSH

3000 The Equitable Building
Atlanta, Georgia 30303
525-5903

[56]

(Caption omitted in printing)

[55] Filed: Feb. 12, 1974

MOTION TO STRIKE

Now come DEKALB COUNTY, GEORGIA, A. C. GUHL, WILLIAM A. WILLIAMS, T. M. CALLAWAY, JR., HOKE CLAYTON SMITH [56], ROBERT J. MORRIS, HORIS A. WARD, and W. M. COOLIDGE, some of the defendants in the above-styled action, and move the Court, pursuant to Rule 12, Federal Rules of Civil Procedure, to strike certain allegations from the Complaint, showing the Court as follows:

1.

Defendants move to strike paragraphs 55 of Count One and 2 of Count Two from the Complaint on the grounds that said paragraphs fail to state a claim upon which relief can be granted in that in Georgia, an action will not lie against a county for the alleged creation and or maintenance of nuisance.

2.

Defendants move to strike paragraph 65 (b) from the Complaint on the ground that said paragraph fails to state a claim upon which relief can be granted in that in Georgia, no direct action lies against the insurer of one of the defendants and evidence of such is inadmissible and prejudicial.

3.

Defendants move to strike paragraphs 12, 19, 39, 41, 58, 63, 64, the remaining allegations of 65 and 66 from the plaintiff's Complaint on the grounds that said para-

graphs fail to state a claim upon which relief can be granted in that a county in Georgia is not subject to suit based upon negligence owing to its constitutional governmental immunity which has not been waived, either expressly or impliedly.

4.

Defendants move to strike paragraphs 53 and 54 of Count One and 2 of Count Three from the Complaint on the ground that said paragraph fails to state a claim upon which relief can be granted in the following particulars:

(a) Plaintiff cannot be a third-party beneficiary to the contracts claimed in said paragraphs to have been breached by these defendants since [57] there is no intent in such contracts to confer upon third persons the type of benefits claimed by plaintiff in this action;

(b) Plaintiff cannot recover as a third-party beneficiary for the breach of said contracts on the basis of their Complaint, the allegations of which considered as a whole, clearly fail to allege any breach of contracts;

(c) Plaintiff cannot recover the damages sought as a third-party beneficiary to the contracts because a third-party beneficiary's rights under any contract are no greater than the rights of the parties themselves, and the contracts which plaintiff alleged to have been breached in said paragraphs confer no right on any party to recover the damages sought in the Complaint.

5.

Defendants move to strike paragraphs 61 and 62 from plaintiff's Complaint on the grounds that said paragraphs

fail to state a claim upon which relief can be granted in that the statutes, ordinances, and regulations recited in said paragraphs do not create in plaintiff a cause of action against these defendants.

WHEREFORE, the defendant, DEKALB COUNTY, GEORGIA, A. C. GUHL, WILLIAM A. WILLIAMS, T. M. CALLAWAY, JR., HOKE CLAYTON SMITH, ROBERT J. MORRIS, HORIS A. WARD and W. M. COOLIDGE, pray that their Motion be inquired into and sustained.

(Signature omitted in printing)

NOTE: Portion of Record Omitted
Filed in its Original Form

(Caption omitted in printing)

[128] Filed: March 28, 1974

PLAINTIFF'S FIRST AMENDMENT OF COMPLAINT

Comes now plaintiff and with leave of court first obtained hereby amends its previously filed complaint as follows:

1.

Plaintiff amends paragraph No. 50 of Count One of the complaint by adding at the end of said paragraph the following new sentence: "True, correct, genuine and authentic copy of one of said Grant Agreements referred to in this complaint is attached hereto as Exhibit A and incorporated herein by reference."

2.

Plaintiff amends Count One of the complaint by adding after paragraph No. 58 and before paragraph No. 59 a new paragraph, designated as paragraph No. 58A, and reading as follows:

"58A.

"As the official retained and employed by DeKalb County as the Airport Manager of DeKalb-Peachtree Airport, [129] it was the duty and responsibility of defendant H. F. Manget to operate, manage, maintain and

supervise said Airport in a safe and careful manner. As part of his duties, said defendant had both the power and the responsibility to close said Airport to air traffic when and if conditions unsafe and hazardous to air traffic and aviation existed or prevailed, and to warn and alert aircraft owners and pilots making use of said Airport of any and all conditions unsafe and hazardous to air traffic and aviation, and to take appropriate action to remove or alleviate any and all conditions unsafe and hazardous to air traffic and aviation. At the time of and prior to the airplane crash in question in this case, said defendant had actual, personal knowledge that the open garbage dump adjacent to Runway 20L constituted an attraction to immense flocks of birds, and that the immense flocks of birds attracted to said open garbage dump constituted a serious and acute bird hazard and condition unsafe and hazardous to aviation and air traffic (particularly jet traffic) at said Airport. At and prior to the time of the airplane crash in question, said defendant knew that birds could be ingested into the turbine engines of jet and turbo-prop airplanes operating into and out of said Airport, and that such ingestion of birds could cause engine power losses and airplane crashes. At and prior to the time of the airplane crash in question, said defendant also knew that airplane-bird strikes or collisions could cause damage to airplanes of any type. At and prior to the time of the crash in question said defendant knew that jet aircraft (including Lear Jet aircraft) and various types of turbo-prop aircraft were based at and daily flew into and out of said Airport. At and prior to the time of the airplane crash in question in this case, said defendant knew that there had been several previous mid-air airplane-bird

strikes and collisions within the boundaries of said Airport and near or adjacent to Runway 20L. On the morning of—but prior to—the airplane crash in question, said defendant knew that large flocks of birds had been attracted to the open garbage dump and were located within the airport boundaries in close proximity to Runway [130] 20L. Said defendant also knew that jet and turboprop and other types of air traffic would be using Runway 20L, and that the arrival and departure of such aircraft frequently startled such flocks of birds and caused such flocks of birds to take to the air and to fly across and within the vertical boundaries of Runway 20L. Despite all of this knowledge, said defendant negligently failed to close said Airport, particularly Runway 20L, to jet and turbo-prop traffic, and negligently failed to warn, advise, notify and alert the known jet owners, jet operators and jet pilots at said Airport of the dangerous and unsafe bird hazard that was in existence, and negligently failed to take adequate precautions and safeguards to prevent an airplane-bird strike from occurring. All of such negligence proximately caused or contributed to the airplane crash in question and plaintiff's damages."

3.

Plaintiff amends subparagraph (b) of paragraph No. 65 of Count One of the complaint by striking the figure "$500,000.00" from said subparagraph and by inserting in lieu thereof the figure "$1,000,000.00," and by adding at the very end of said subparagraph the following new sentence: "True, correct, genuine and authentic copy of said insurance policy is attached hereto as Exhibit B and incorporated herein by reference."

4.

Plaintiff amends Count One of the complaint by adding after paragraph No. 65 and before paragraph No. 66 a new paragraph, designated as paragraph No. 65A and reading as follows:

[131] "65A.

"DeKalb County purchased the aforesaid liability insurance policy pursuant to a written bid authorized and approved and let or advertised by DeKalb County to the insurance market or industry. True, correct, genuine and authentic copy of said written bid authorized, approved and let or advertised by DeKalb County is attached hereto as Exhibit C and incorporated herein by reference. Said bid in part provides as follows:

> 'Policy to contain rider "Waiver of Governmental Immunity" as follows: "It is agreed that the company waives any right to deny liability under the policy or to refuse payment within the limits thereof by reason of the non-liability of the insured political subdivision for the wrongful or negligent acts of its agents and employees and its immunity from suit as an agency of the State performing governmental functions." '

As a resulting of authorizing, approving and letting or advertising said written bid containing the aforesaid specification, and as a result of having authorized and approved the purchase of the aforesaid liability insurance policy pursuant to and in accordance with the terms and specifications of said authorized and approved written bid, DeKalb County has either expressly or impliedly waived any defense of governmental or sovereign immunity with respect to the claims of plaintiff herein, at least to the

[131]

extent of the $1,000,000.00 property damage liability protection afforded to DeKalb County in this case under said liability insurance policy."

5.

Plaintiff amends the complaint by adding thereto a new Count, designated as Count Four and reading as follows:

"COUNT FOUR

"As its fourth and alternative claim for relief, plaintiff respectfully shows to the Court the following:

[132] "1.

"Plaintiff incorporates, adopts, repeats and re-alleges herein by reference the allegations of paragraphs numbered 1 through 66 of Count One of the complaint, the allegations of paragraphs numbered 1 through 4 of plaintiff's first amendment of complaint, the allegations of Count Two of the complaint and the allegations of Count Three of the complaint.

"2.

"Article I, Section III, Paragraph I of the 1945 Constitution of the State of Georgia (Georgia Code Section 2-301) provides in pertinent part as follows: 'Private property shall not be taken, *or damaged*, for public purposes, without just and adequate compensation being first paid, . . .' (Emphasis added.)

"3.

"Georgia Code Section 85-1802 provides as follows: 'For *every* violation of a contract express or implied, and for *every* injury done by another to person or property, the law gives a right to recover, and a remedy to enforce it.

[133]

Such a right is a chose in action, and such a remedy is an action or suit at law.' (Emphasis added.)

"4.

"Georgia Code Section 3-105 provides as follows: 'For every right there shall be a remedy, and every court having jurisdiction of the one may, if necessary, frame the other.'

"5.

"As alternative claim for relief, plaintiff shows that if the operation of DeKalb-Peachtree Airport by DeKalb County is a governmental function engaged in for public purposes, or if the construction, maintenance and operation of the open garbage dump by DeKalb County adjacent to Runway 20L is a governmental function engaged in for public [133] purposes, then the airplane accident in question and the destruction of Lear Jet N-454RN proximately resulted from the doing of work by DeKalb County for a public purpose and from the creation and operation by DeKalb County of a public project, without just and adequate compensation for said aircraft damage being first paid, in violation of Article I, Section III, Paragraph I of the 1945 Constitution of the State of Georgia.

"WHEREFORE, plaintiff respectfully prays that process issue as provided by law, requiring the County defendants to appear and answer this complaint, that plaintiff have judgment against all of the County defendants jointly and severally in the sum of $1,000,000.00, plus all costs of Court, and that plaintiff have such other and further relief as the Court deems just and proper."

WHEREFORE, plaintiff respectfully prays that this amendment be inquired into and allowed and ordered filed, and that plaintiff have the relief sought in the complaint as amended.

(Signature omitted in printing)

CERTIFICATE

I, _____, the duly qualified Clerk of the County of DeKalb, Georgia, do hereby certify that the attached extract from the Minutes of the regular _____ Meeting of the Commissioners of Roads & Revenues of DeKalb County, Georgia held on _____, 19 ___, is a true and correct copy of the original minutes of said meeting on file and of record insofar as said original minutes relate to the matters set forth in said attached extract, and I do further certify that the copy of the Resolution appearing in said attached extract is a true and correct copy of such Resolution adopted at said Meeting and on file and of record.

In testimony whereof, I have hereunto set my hand and the seal of said _____, this ___ day of _____, 19 ___.

_____
Clerk
DeKalb County, Georgia

SEAL

Exhibit A
(40 pages)

BEST COPY AVAILABLE

EXTRACT FROM THE MINUTES OF A (REGULAR) (SPECIAL)
MEETING OF THE COMMISSIONERS OF ROADS & REVENUES OF DEKALB COUNTY, GEORGIA
HELD ON _____, 19____

The following Resolution was introduced by _____, seconded by _____, read in full, considered and adopted:

" RESOLUTION ADOPTING AND APPROVING THE EXECUTION OF GRANT AGREEMENT FOR PROJECT NO. 9-09-050-0206 BETWEEN THE UNITED STATES OF AMERICA AND DEKALB COUNTY, GEORGIA.

BE IT RESOLVED, by the Commissioners of Roads and Revenues OF DeKalb County, Georgia:

SECTION 1. That said Commissioners hereby authorizes the execution of Grant Agreement between the Federal Aviation Administration on behalf of the United States of America and the County of DeKalb, Georgia.

SECTION 2. That the Chairman, _____ is hereby authorized and directed to execute said Grant Agreement in quadruplicate on behalf of said DeKalb County, Georgia, and the Clerk, _____ is hereby authorized and directed to impress the official seal of the County of DeKalb, Georgia and to attest said execution.

SECTION 3. That the Grant Agreement referred to hereinabove shall be attached hereto and made a part of this Resolution as though it were fully copied herein.

FEDERAL AVIATION AGENCY
ADMINISTRATION

GRANT AGREEMENT

Part I-Offer

Date of Offer

DEKALB-PEACHTREE Airport
ATLANTA, GEORGIA
Project No. 9-09-050-0206

Contract No. FA-68-80-4532

TO: DeKalb County, Georgia
(herein referred to as the "Sponsor")

FROM: The United States of America (acting through the Federal Aviation Agency, herein referred to as the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated April 5, 1968, for a grant of Federal funds for a project for development of the DeKalb-Peachtree Airport (herein called the "Airport"), together with plans and specifications for such project, which Project Application, as approved by the FAA is hereby incorporated herein and made a part hereof; and

WHEREAS, the FAA has approved a project for development of the Airport (herein called the "Project") consisting of the following-described airport development:

Acquire land for airport development (fee simple title to Tr 235 - 247, inclusive); construct and light portions of runways; extend aprons, including building removal; and relocate wind cone.

all as more particularly described in the property maps and plans and specifications incorporated in the said Project Application;

32 (3-62) USCOMM-DC 27210

NOW THEREFORE, pursuant to and for the purpose of carrying out the provisions of the Federal Airport Act, as amended (49 U.S.C. 1101), and in consideration of (a) the Sponsor's adoption or ratification of the representations and assurances contained in said Project Application, and its acceptance of this Offer as hereinafter provided, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and the operation and maintenance of the Airport as hereinafter provided, THE UNITED STATES, HEREBY OFFERS AND AGREES to pay, as the United States share of the allowable costs incurred in accomplishing the Project, 50 percent of all allowable project costs.

This Offer is made on and subject to the following terms and conditions:

1. The maximum obligation of the United States payable under this Offer shall be $ 92,500.

2. The Sponsor shall:

   (a) begin accomplishment of the Project within ninety (90) days after acceptance of this Offer or such longer time as may be prescribed by the FAA, with failure to do so constituting just cause for termination of the obligations of the United States hereunder by the FAA;

   (b) carry out and complete the Project without undue delay and in accordance with the terms hereof, the Federal Airport Act, and Sections 151.45-151.55 of the Regulations of the Federal Aviation Agency (14 CFR 151) in effect as of the date of acceptance of this Offer; which Regulations are hereinafter referred to as the "Regulations";

   (c) carry out and complete the Project in accordance with the plans and specifications and property maps, incorporated herein, as they may be revised or modified with the approval of the FAA.

3. The allowable costs of the project shall not include any costs determined by the FAA to be ineligible for consideration as to allowability under Section 151.47 (a) of the Regulations.

4. Payment of the United States share of the allowable project costs will be made pursuant to and in accordance with the provisions of Sections 151.47-151.51 of the Regulations. Final determination as to the allowability of the costs of the project will be made at the time of the final grant payment pursuant to Section 151.53 of the Regulations, except that, in the event a semi-final grant payment is made pursuant to Section 151.51 of the Regulations, final determination as to the allowability of the costs to which the semi-final payment relates will be made at the time of such semi-final payment.

5. The Sponsor shall operate and maintain the Airport as Provided in the Project Application incorporated herein and specifically covenants and agrees, in accordance with its Assurance 4 in Part III of said Project Application, that in its operation and the operation of all facilities thereof, neither it nor any person or organization occupying space or facilities thereon will discriminate against any person or class of persons by reason of race, color, creed or national origin in the use of any of the facilities provided for the public on the airport.

6. The FAA reserves the right to amend or withdraw this Offer at any time prior to its acceptance by the Sponsor.

7. This Offer shall expire and the United States shall not be obligated to pay any part of the costs of the Project unless this Offer has been accepted by the Sponsor on or before June 15, 1968 or such subsequent date as may be prescribed in writing by the FAA.

8. In addition the sponsor shall:

   (a) Incorporate or cause to be incorporated in each contract for construction work under the project, or any modification thereof, the equal opportunity clause as set forth in Section 202 of Executive Order No. 11246 of September 24, 1965, or such modification thereof as may be approved by the Secretary of Labor.

   (b) Incorporate or cause to be incorporated in all bid or proposal forms submitted by prospective contractors for construction work under the project the provisions prescribed by Section 151.54 (d)(1), Part 151, Federal Aviation Regulations.

   (c) Be bound by said equal opportunity clause in any Federally assisted construction work in which it participates.

   (d) Cooperate actively with the FAA and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor.

   (e) Furnish the FAA and the Secretary of Labor such information as they may require for the supervision of such compliance, and will otherwise assist the FAA in discharging its primary responsibility for securing compliance.

   (f) Refrain from entering into any contract or contract modification subject to Executive Order No. 11246 with a contractor debarred from, or who has not demonstrated eligibility for, government

BEST COPY AVAILABLE

contracts and Federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order No. 11246.

(g) Carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the FAA and the Secretary of Labor pursuant to Part II, Subpart D of Executive Order No. 11246; and in the event that the sponsor fails or refuses to comply with its undertakings, the FAA may cancel, terminate or suspend in whole or in part any contractual arrangement it may have with the sponsor, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from such applicant, or may refer the case to the Department of Justice for appropriate legal proceedings.

9. The sponsor's financial records of the project, established, maintained and made available to personnel of the FAA in conformity to Section 151.55 of the Regulations of the Federal Aviation Administration (14 CFR 151) will also be available to representatives of the Comptroller General of the United States.

10. It is understood and agreed that the terms "Administrator of the Federal Aviation Administration," "Administrator" or "Federal Aviation Administration" wherever they appear in this Agreement, in the Project Application, plans and specifications or other documents constituting a part of this Agreement shall be deemed to mean the Federal Aviation Administrator or the Federal Aviation Administration as the case may be.

11. Notwithstanding the provision of Paragraph 3, Part III, of the Project Application, the sponsor covenants and agrees that it will not grant or permit any exclusive right forbidden by Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349) at the airport, or at any other airport now or hereafter owned or controlled by it. In furtherance of the policy of the FAA under this covenant, the sponsor agrees that, unless authorized by the Administrator, it will not, either directly or indirectly grant or permit any person, firm, or corporation the exclusive right at the airport or at any other airport now or hereafter owned or controlled by it to conduct any aeronautical activities, including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their relationship to the operation of aircraft can be regarded as an aeronautical activity. The sponsor further agrees that it will terminate any such exclusive right (including any exclusive right to engage in the sale of gasoline or oil, or both) now existing at the airport, or at any other airport now or hereafter owned or controlled by it, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right, and certifies that there is no exclusive right not subject to termination under this [illegible]

12. It is mutually understood and agreed that no payment of federal funds under this Grant Agreement will be made prior to July 1, 1968.

13. The Federal Government does not now plan or contemplate the construction of any structures pursuant to Paragraph 9 of Part III - Sponsor's Assurances of the Project Application dated April 5, 1968, and therefore it is understood and agreed that the Sponsor is under no obligation to furnish any such areas or rights under this Grant Agreement. However, nothing contained herein shall be construed as altering or changing the rights of the United States and/or the obligations of the Sponsor under prior Grant Agreements to furnish rent-free space for the activities specified in such Agreements.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and said Offer and Acceptance shall comprise a Grant Agreement, as provided by the Federal Airport Act, constituting the obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and the operation and maintenance of the Airport. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer and shall remain in full force and effect throughout the useful life of the facilities developed under the Project but in any event not to exceed twenty years from the date of said acceptance.

UNITED STATES OF AMERICA
FEDERAL AVIATION AGENCY

By [signature]
(TITLE)
Acting Area Manager

Part II-Acceptance

The Sponsor, DeKalb County, Georgia does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby accept said Offer and by such acceptance agrees to all of the terms and conditions thereof.

Executed this day of , 19

DEKALB COUNTY
(Name of Sponsor)

(SEAL)

By [signature]

Title

Attest: [signature]

Title: Clerk

CERTIFICATE OF SPONSOR'S ATTORNEY

I [signature], acting as Attorney for DeKalb County (herein referred to as the "Sponsor") do hereby certify:

That I have examined the foregoing Grant Agreement and the proceedings of the Sponsor relating thereto, and find that the execution thereof by said Sponsor is authorized and that the execution thereof is in all respects duly and properly and in accordance with the laws of the State of Georgia, and further that, in my opinion, said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at Decatur, Ga. this [illegible] day of [illegible], 19[illegible]

Title [illegible]

FAA FORM 1632 (3-62) USE PREVIOUS EDITION

THE FOLLOWING IS A SUMMARY OF THE ESTIMATED COSTS OF THE PROJECT:

ITEM	TOTAL ESTIMATED COST	ESTIMATED SPONSOR'S SHARE OF COST		ESTIMATED FEDERAL SHARE OF COST	
		AMOUNT	PER-CENT	AMOUNT	PER-CENT
1. Land Costs	$473,030	$236,515	50	$236,515	50
2. Construction Costs	None				
3. Engineering and Supervision Costs	9,461				
4. Administrative Costs	9,461				
5. Total of 2, 3, and 4 above	18,922	9,461	50	9,461	50
6. Contingencies	18,000	9,000	50	9,000	50
7. Total All Estimated Project Costs (Items 1, 5, and 6)	$509,952	$254,976		$254,976	

Part II—REPRESENTATIONS

The Sponsor hereby represents and certifies as follows:

1. Legal Authority.—The Sponsor has the legal power and authority: (1) to do all things necessary in order to undertake and carry out the Project in conformity with the Act and the Regulations; (2) to accept, receive, and disburse grants of funds from the United States in aid of the Project, on the terms and conditions stated in the Act and the Regulations; and (3) to carry out all of the provisions of Parts III and IV of this Project Application.

2. Funds.—The Sponsor now has on deposit, or is in a position to secure, $ 254,976 for use in defraying the costs of the Project. The present status of these funds is as follows:

[illegible] General Obligation Bonds [illegible]

[illegible]

3. Approvals. [illegible] approved by all non-Federal agencies whose approval is required, namely:

[illegible]

TO: (1) (SO-7) (MIA-7)x
(2) SO-660

CERTIFICATE OF SUFFICIENCY OF EXECUTION-

AIRPORT		
DeKalb-Peachtree		
CITY	STATE	PROJECT NO.
Atlanta	Georgia	9-09-050-1006

The (Grant Agreement) (Amendment to the Grant Agreement) and Resolution authorizing acceptance and execution for the above project have been examined and the execution of the (Grant Agreement) (Amendment to the Grant Agreement) is legally sufficient.

SIGNATURE OF INDIVIDUAL) (AREA CODE)	OFFICIAL STATUS	ATE

RECEIVED

50 FORM 4100-1 (3-62) (Formerly FAA 7100.1A)

FEDERAL AVIATION AGENCY
ADMINISTRATION

GRANT AGREEMENT

Part 1-Offer

Date of Offer

DEKALB-PEACHTREE Airport
ATLANTA, GEORGIA
Project No. 9-09-050-1006

Contract No. FA-68-SO-1032

TO: DeKalb County, Georgia
(herein referred to as the "Sponsor")

FROM: The United States of America (acting through the Federal Aviation Agency, herein referred to as the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated April 5, 1968, for a grant of Federal funds for a project for development of the DeKalb-Peachtree Airport (herein called the "Airport"), together with plans and specifications for such project, which Project Application, as approved by the FAA is hereby incorporated herein and made a part hereof; and

WHEREAS, the FAA has approved a project for development of the Airport (herein called the "Project") consisting of the following-described airport development:

Acquire land for airport development (fee simple title to Tracts 138 - 147, inclusive); construct, mark and light portions of taxiways; extend aprons, including building removal; and relocate wind cone.

all as more particularly described in the property map and plans and specifications incorporated in the said Project Application;

FAA FORM 1632 (3-62) USE PREVIOUS EDITION

PAGE 1

NOW THEREFORE, pursuant to and for the purpose of carrying out the provisions of the Federal Airport Act, as amended (49 U.S.C. 1101), and in consideration of (a) the Sponsor's adoption and ratification of the representations and assurances contained in said Project Application, and its acceptance of this Offer as hereinafter provided, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and the operation and maintenance of the Airport as herein provided, THE FEDERAL AVIATION AGENCY, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay, as the United States share of the allowable costs incurred in accomplishing the Project, 50 percent of all allowable project costs.

This Offer is made on and subject to the following terms and conditions:

1. The maximum obligation of the United States payable under this Offer shall be $ 92,500.

2. The Sponsor shall:

   (a) begin accomplishment of the Project within ninety (90) days after acceptance of this Offer or such longer time as may be prescribed by the FAA, with failure to do so constituting just cause for termination of the obligations of the United States hereunder by the FAA;

   (b) carry out and complete the Project without undue delay and in accordance with the terms hereof, the Federal Airport Act, and Sections 151.45-151.55 of the Regulations of the Federal Aviation Agency (14 CFR 151) in effect as of the date of acceptance of this Offer; which Regulations are hereinafter referred to as the "Regulations";

   (c) carry out and complete the Project in accordance with the plans and specifications and property map, incorporated herein, as they may be revised or modified with the approval of the FAA.

3. The allowable costs of the project shall not include any costs determined by the FAA to be ineligible for consideration as to allowability under Section 151.41 (b) of the Regulations.

4. Payment of the United States share of the allowable project costs will be made pursuant to and in accordance with the provisions of Sections 151.57 - 151.63 of the Regulations. Final determination as to the allowability of the costs of the project will be made at the time of the final grant payment pursuant to Section 151.63 of the Regulations: Provided, that, in the event a semi-final grant payment is made pursuant to Section 151.63 of the Regulations, final determination as to the allowability of those costs to which such semi-final payment relates will be made at the time of such semi-final payment.

5. The Sponsor shall operate and maintain the Airport as Provided in the Project Application incorporated herein and specifically covenants and agrees, in accordance with its Assurance 4 in Part III of said Project Application, that in its operation and the operation of all facilities thereof, neither it nor any person or organization occupying space or facilities thereon will discriminate against any person or class of persons by reason of race, color, creed or national origin in the use of any of the facilities provided for the public on the airport.

6. The FAA reserves the right to amend or withdraw this Offer at any time prior to its acceptance by the Sponsor.

7. This Offer shall expire and the United States shall not be obligated to pay any part of the costs of the Project unless this Offer has been accepted by the Sponsor on or before June 15, 1968 or such subsequent date as may be prescribed in writing by the FAA.

8. In addition the sponsor shall:

   (a) Incorporate or cause to be incorporated in each contract for construction work under the project, or any modification thereof, the equal opportunity clause as set forth in Section 202 of Executive Order No. 11246 of September 24, 1965, or such modification thereof as may be approved by the Secretary of Labor.

   (b) Incorporate or cause to be incorporated in each bid or proposal form submitted by prospective contractors for construction work under the project the provisions prescribed by Section 151.54 (d)(1), Part 151, Federal Aviation Regulations.

   (c) Be bound by said equal opportunity clause in any Federally assisted construction work in which it participates.

   (d) Cooperate actively with the FAA and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor.

   (e) Furnish the FAA and the Secretary of Labor such information as they may require for the supervision of such compliance and will otherwise assist the FAA in the discharge of its primary responsibility for securing compliance.

   (f) Refrain from entering into any contract or contract modification subject to Executive Order No. 11246 with a contractor debarred from, or who has not demonstrated eligibility for, government

contracts and Federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order No. 11246.

(g) Carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the FAA and the Secretary of Labor pursuant to Part II, Subpart D of Executive Order No. 11246; and in the event that the Sponsor fails or refuses to comply with its undertakings, the FAA may cancel, terminate or suspend in whole or in part any contractual arrangement it may have with the sponsor, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from such applicant, or may refer the case to the Department of Justice for appropriate legal proceedings.

9. The sponsor's financial records of the project, established, maintained and made available to personnel of the FAA in conformity to Section 121.45 of the Regulations of the Federal Aviation Administration (14 CFR 121) will also be available to representatives of the Comptroller General of the United States.

10. It is understood and agreed that the terms "Administrator of the Federal Aviation Administration," "Administrator" or "Federal Aviation Administration" wherever they appear in this Agreement, in the Project Application, plans and specifications or other documents constituting a part of this Agreement shall be deemed to mean the Federal Aviation Administrator or the Federal Aviation Administration as the case may be.

11. Notwithstanding the provision of Paragraph 3, Part III, of the Project Application, the sponsor covenants and agrees that it will not grant or permit any exclusive right forbidden by Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349) at the airport, or at any other airport now or hereafter owned or controlled by it. In furtherance of the policy of the FAA under this covenant, the sponsor agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm, or corporation the exclusive right at the airport or at any other airport now or hereafter owned or controlled by it, to conduct any aeronautical activities, including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their relationship to the operation of aircraft can be regarded as an aeronautical activity. The sponsor further agrees that it will terminate any such exclusive right (including any exclusive right to engage in the sale of gasoline or oil, or both) now existing at the airport, or at any other airport now or hereafter owned or controlled by it, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right, and certifies that there is no exclusive right not subject to termination under this provision."

12. It is mutually understood and agreed that no payment of federal funds under this Grant Agreement will be made prior to July 1, 1968.

13. The Federal Government does not now plan or contemplate the construction of any structures pursuant to Paragraph 9 of Part III - Sponsor's Assurances of the Project Application dated April 9, 1968, and therefore it is understood and agreed that the Sponsor is under no obligation to furnish any such areas or rights under this Grant Agreement. However, nothing contained herein shall be construed as altering or changing the rights of the United States and/or the obligations of the Sponsor under prior Grant Agreements to furnish rent-free space for the activities specified in such Agreements.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and said Offer and Acceptance shall comprise a Grant Agreement, as provided by the Federal Airport Act, constituting the obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and the operation and maintenance of the Airport. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer and shall remain in full force and effect throughout the useful life of the facilities developed under the Project or for a period not to exceed twenty years from the date of said acceptance.

UNITED STATES OF AMERICA
FEDERAL AVIATION AGENCY

By _____
(TITLE)
Acting Area Manager

Part II-Acceptance

The Sponsor, DeKalb County, Georgia does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer and does hereby accept said Offer and by such acceptance agrees to all of the terms and conditions thereof.

Executed this _____ day of _____, 19__.

DEKALB COUNTY
(Name of Sponsor)

By _____

Title _____

(SEAL)

Attest: _____

Title: Clerk

CERTIFICATE OF SPONSOR'S ATTORNEY

I, Hubert O Edwards, acting as Attorney for DeKalb County (herein referred to as the "Sponsor") do hereby certify:

That I have examined the foregoing Grant Agreement and the proceedings taken by said Sponsor relating thereto, and find that the Acceptance thereof by said Sponsor has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the State of Georgia, and further that, in my opinion, said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at Decatur, Ga. this 10th day of May, 1965.

Hubert O Edwards

Title Assistant County Atty.

Form Approved.
Budget Bureau No. 04-R006.4.

UNITED STATES OF AMERICA
FEDERAL AVIATION AGENCY

PROJECT APPLICATION

(For Federal Aid for Development of Public Airports)

Part I–PROJECT INFORMATION

The DeKalb County (herein called the "Sponsor") hereby makes application to the Federal Aviation Agency (hereinafter called the "FAA"), for a grant of Federal funds pursuant to the Federal Airport Act and the Regulations issued thereunder, for the purpose of aiding in financing a project (herein called the "Project") for development of the DeKalb Peachtree Airport (herein called the "Airport") located in DeKalb County State of Georgia.

It is proposed that the Project consist of the following-described airport development:

Construct and light taxiways; extend parking aprons, acquire tracts 13. to 147 inclusive

all as more particularly described on the property map attached (hereto as Exhibit "A")* (as Exhibit "A" to Project Application dated _____ for Project No. _____)*, and in the plans and specifications submitted to the FAA on January 16, 1968 which are made a part hereof.

*Strike out the inappropriate clause.

THE FOLLOWING IS A SUMMARY OF THE ESTIMATED COSTS OF THE PROJECT:

ITEM	TOTAL ESTIMATED COST	ESTIMATED SPONSOR'S SHARE OF COST		ESTIMATED FEDERAL SHARE OF COST	
		AMOUNT	PERCENT	AMOUNT	PERCENT
1. LAND COSTS	37,000	18,500	50	18,500	50
2. CONSTRUCTION COSTS	130,000				
3. ENGINEERING AND SUPERVISION COSTS	13,000				
4. ADMINISTRATIVE COSTS	500				
5. Total of 2, 3, and 4 above	143,500	71,750	50	71,750	50
6. CONTINGENCIES	4,500	2,250	50	2,250	50
7. TOTAL ALL ESTIMATED PROJECT COSTS (Items 1, 5, and 6)	185,000	92,500		92,500	

Part II–REPRESENTATIONS

The Sponsor hereby represents and certifies as follows:

1. **Legal Authority.**—The Sponsor has the legal power and authority: (1) to do all things necessary in order to undertake and carry out the Project in conformity with the Act and the Regulations; (2) to accept, receive, and disburse grants of funds from the United States in aid of the Project, on the terms and conditions stated in the Act and the Regulations; and (3) to carry out all of the provisions of Parts III and IV of this Project Application.

2. **Funds.**—The Sponsor now has on deposit, or is in a position to secure, $ 92,500.00 for use in defraying the costs of the Project. The present status of these funds is as follows:

Airport Construction and Improvement Fund

3. **Compatible Land Use.**—The Sponsor has taken the following actions to assure compatible usage of land adjacent to or in the vicinity of the airport:

Airport Zoning has been passed and approved by the Federal Aviation Administration. Adequate property interests are being acquired in clear zones.

BEST COPY AVAILABLE

4. **Approvals of Other Agencies.**—The Project has been approved by all non-Federal agencies whose approval is required, namely:

See attached letter from Atlanta Region Metropolitan Planning Commission dated March 22, 1968.

5. **Defaults.**—The Sponsor is not in default on any obligation to the United States or any agency of the United States Government relative to the development, operation, or maintenance of any airport, except as stated herewith:

None

6. **Possible Disabilities.**—There are no facts or circumstances (including the existence of effective or proposed leases, use agreements, or other legal instruments affecting use of the Airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project or carry out the provisions of Parts III and IV of the Project Application, either by limiting its legal or financial ability or otherwise, except as follows:

None

7. **Land.**—(a) The Sponsor holds the following property interest in the following areas of land[1] which are to be developed or used as part of or in connection with the Airport, subject to the following exceptions, encumbrances, and adverse interests, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

Fee Simple Free & Clear: Tracts 1,2,A,B-2 & Parcels C,D,E,F, G,H,J,U,Y2,Y3,I,O,Q,29,30,31,32,34,34A,35,36,143,144,145.

Fee Simple subject to exceptions cleared under previous FAAP Projects: Tract 51.

Easements subject to exceptions cleared under previous FAAP Projects: Tract 3.

The Sponsor further certifies that the above is based on a title examination by a qualified attorney or title company and that such attorney or title company has determined that the Sponsor holds the above property interests.

[1] State character of property interest in each area and list and identify for each all exceptions, encumbrances, and adverse interests of every kind and nature, including liens, easements, leases, etc. The separate areas of land need only be identified here by the area numbers shown on the property map.
(9-64)

(b) The Sponsor will acquire within a reasonable time, but in any event prior to the start of any construction work under the Project, the following property interest in the following areas of land[1] on which such construction work is to be performed, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

None required

(c) The Sponsor will acquire within a reasonable time, and if feasible prior to the completion of all construction work under the Project, the following property interest in the following areas of land[1] which are to be developed or used as part of or in connection with the Airport as it will be upon completion of the Project, all of which areas are identified on the aforementioned property map designated as Exhibit "A":

Satisfactory property interests in tracts 138 to 142 inclusive, 140 and 147

[1]State character of property interest in each area and identify for each all exceptions, encumbrances, and adverse interests of every kind and nature, including liens, easements, leases, etc. The separate areas of land need only be identified here by the area numbers shown on the property map.

Part III—SPONSOR'S ASSURANCES

In order to furnish the assurances required by the Act and Regulations the Sponsor hereby covenants and agrees with the United States, as follows:

1. These covenants shall become effective upon acceptance by the Sponsor of an offer of Federal aid for the Project or any portion thereof, made by the FAA and shall constitute a part of the Grant Agreement thus formed. These covenants shall remain in full force and effect throughout the useful life of the facilities developed under this Project, but in any event not to exceed twenty (20) years from the date of said acceptance of an offer of Federal aid for the Project.

2. The Sponsor will operate the Airport as such for the use and benefit of the public. In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically agrees that it will keep the Airport open to all types, kinds, and classes of aeronautical use without discrimination between such types, kinds, and classes: *Provided*, That the Sponsor may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the Airport as may be necessary for the safe and efficient operation of the Airport; *And Provided Further*, That the Sponsor may prohibit or limit any given type, kind, or class of aeronautical use of the Airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

3. The Sponsor will not grant or permit any exclusive right for the use of the airport forbidden by Section 308 of the Federal Aviation Act of 1958, and will otherwise comply with all applicable laws. In furtherance of this covenant (but without limiting its general applicability and effect) the Sponsor specifically agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm, or corporation the exclusive right for the conduct of any aeronautical activities on the Airport, including but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity: *Provided*, That the prohibition against the grant or permit of an exclusive right as set forth herein in no way alters the rights or obligations of the Sponsor under a surplus property instrument of transfer pursuant to which surplus property was conveyed to the Sponsor by the United States pursuant to the *Surplus Property Act of 1944, (61 Stat. 678), as amended.*

4. The Sponsor agrees that it will operate the Airport for the use and benefit of the public, on fair and reasonable terms, and without unjust discrimination. In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically covenants and agrees:

a. That in its operation and the operation of all facilities on the airport, neither it nor any person or organization occupying space or facilities thereon will discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of any of the facilities provided for the public on the Airport.

b. That in any agreement, contract, lease, or other arrangement under which a right or privilege at the Airport is granted to any person, firm, or corporation to render to the public any service (including the furnishing or sale of any aeronautical parts, materials, or supplies) essential to the operation of aircraft at the Airport, the Sponsor will insert and enforce provisions requiring the contractor:

(1) to furnish said service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and

(2) to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; *Provided*, That the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. That it will not exercise or grant any right or privilege which would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance and repair) that it may choose to perform.

d. In the event the Sponsor itself exercises any of the rights and privileges referred to in subsection b, the services involved will be provided on the same conditions as would apply to the furnishing of such services by contractors or concessionaires of the Sponsor under the provisions of such subsection b.

5. Nothing contained herein shall be construed to prohibit the granting or exercise of an exclusive right for the furnishing of nonaviation products and supplies or any service of a nonaeronautical nature or to obligate the Sponsor to furnish any particular nonaeronautical service at the Airport.

6. The Sponsor will operate and maintain in a safe and serviceable condition the Airport and all facilities thereon and connected therewith which are necessary to serve the aeronautical users of the Airport other than facilities owned or controlled by the United States, and will not permit any activity thereon which would interfere with its use for airport purposes: *Provided*, That nothing contained herein shall be construed to require that the Airport be operated for aeronautical uses during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance; *And Provided Further*, That nothing herein shall be construed as requiring the maintenance, repair, restoration or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the Sponsor.

7. Insofar as it is within its power and reasonably possible, the Sponsor will, either by the acquisition and retention of easements or other interests in or rights for the use of land or airspace or by the adoption and enforcement of zoning regulations, prevent the construction, erection, alteration, or growth of any structure, tree, or other object in the approach areas of the runways of the Airport, which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Section 77.23 of FAA Federal Aviation Regulations Part 77, or Advisory Circular (AC) No. 150/5300-1, whichever is applicable according to the currently approved airport layout plan. In addition, the Sponsor will not erect or permit the erection of any permanent structure or facility which would interfere materially with the use, operation, or future development of the Airport, in any portion of a runway approach area in which the Sponsor has acquired, or may hereafter acquire, property interests permitting it to so control the use made of the surface of the land.

8. All facilities of the Airport developed with Federal aid and all those usable for the landing and taking off of aircraft, will be available to the United States at all times, without charge, for use by military and naval aircraft in common with other aircraft, except that if the use by military and naval aircraft is substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining facilities so used, may be charged. Unless otherwise determined by the FAA, or otherwise agreed to by the Sponsor and the using agency, substantial use of an airport by military and naval aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the FAA, would unduly interfere with use of the landing area by other authorized aircraft, or during any calendar month that:

a. Five (5) or more military or naval aircraft are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement and each takeoff as a movement) of military or naval aircraft is 300 or more, or the gross accumulative weight of military or naval aircraft using the Airport (the total movements of military or naval aircraft multiplied by gross certified weights of such aircraft) is in excess of five million pounds.

9. Whenever so requested by the FAA, the Sponsor will furnish without cost to the Federal Government, for construction, operation and maintenance of facilities for air traffic control activities, or weather reporting activities and communication activities related to air traffic control, such areas of land or water, or estate therein, or rights in buildings of the Sponsor as the FAA may consider necessary or desirable for construction at Federal expense of space or facilities for such purposes. The approximate amounts of areas and the nature of the property interests and/or rights so required will be set forth in the Grant Agreement relating to the Project. Such areas or any portion thereof will be made available as provided herein within 4 months after receipt of written request from the FAA.

10. The Sponsor will furnish the FAA with such annual or special airport financial and operational reports as may be reasonably requested. Such reports may be submitted on forms furnished by the FAA, or may be submitted in such manner as the Sponsor elects so long as the essential data are furnished. The Airport and all airport records and documents affecting the Airport, including deeds, leases, operation and use agreements, regulations, and other instruments, will be made available for inspection by any duly authorized representative of the FAA upon reasonable request. The Sponsor will furnish to the FAA, upon request, a true copy of any such document.

11. The Sponsor will not enter into any transaction which would operate to deprive it of any of the rights and powers necessary to perform any or all of the covenants made herein, unless by such transaction the obligation to perform all such covenants is assumed by another public agency found by the FAA to be eligible under the Act and Regulations to assume such obligations and having the power, authority, and financial resources to carry out all such obligations. If an arrangement is made for management or operation of the Airport by any agency or person other than the Sponsor or an employee of the Sponsor, the Sponsor will reserve sufficient rights and authority to insure that the Airport will be operated and maintained in accordance with the Act, the Regulations, and these covenants.

12. The Sponsor will keep up to date at all times an airport layout plan of the Airport showing (1) the boundaries of the Airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the Sponsor for airport purposes, and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities, and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such airport layout plan, and each amendment, revision, or modification thereof, shall be subject to the approval of the FAA, which approval shall be evidenced by the signature of a duly authorized representative of the FAA on the face of the airport layout plan. The Sponsor will not make or permit the making of any changes or alterations in the Airport or any of its facilities other than in conformity with the airport layout plan as so approved by the FAA, if such changes or alterations might adversely affect the safety, utility, or efficiency of the Airport.

13. Insofar as is within its power and to the extent reasonable, the Sponsor will take action to restrict the use of land adjacent to or in the immediate vicinity of the Airport to activities and purposes compatible with normal airport operations including landing and takeoff of aircraft.

14. If at any time it is determined by the FAA that there is any outstanding right or claim of right in or to the Airport property, other than those set forth in Part II, paragraphs 7(a), 7(b), and 7(c), the existence of which creates an undue risk of interference with the operation of the Airport or the performance of the covenants of this Part, the Sponsor will acquire, extinguish, or modify such right or claim of right in a manner acceptable to the FAA.

15. Unless the context otherwise requires, all terms used in these covenants which are defined in the Act and the Regulations shall have the meanings assigned to them therein.

16. Exhibit "B", Sponsor's Assurances of Nondiscrimination, is attached hereto and made a part hereof.

*Section 77.23 as applied to Section 77.27, Part 77 of the Federal Aviation Regulations.

Part IV—PROJECT AGREEMENT

If the Project or any portion thereof is approved by the FAA, and an offer of Federal aid for such approved Project is accepted by the Sponsor, it is understood and agreed that all airport development included in such Project will be accomplished in accordance with the Act and the Regulations, the plans and specifications for such development, as approved by the FAA, and the Grant Agreement with respect to the Project.

IN WITNESS WHEREOF, the Sponsor has caused this Project Application to be duly executed in its name, this 5th day of April, 19 68.

DeKalb County, Georgia
(Name of Sponsor)

By: Prince H. Manning, Jr.
Prince H. Manning, Jr.

Chairman, Board of Commissioners of Roads and Revenues
(Title)

OPINION OF SPONSOR'S ATTORNEY

I HEREBY CERTIFY that all statements of law made in this Project Application and all legal conclusions upon which the representations and covenants contained herein are based, are in my opinion true and correct.

Herbert O. Edwards
~~George D. Dillard~~

Asst DeKalb County Attorney
(Title)

April 5, 1968
(Date)

SPONSOR ASSURANCE TO ACCOMPANY PROJECT APPLICATION DATED April 5, 1968
FOR A GRANT OF AID FOR THE DEVELOPMENT OR IMPROVEMENT OF THE
DeKalb Peachtree AIRPORT

Nondiscrimination in Federally-Assisted Programs of the FAA. In order to furnish the assurances required by Title VI of the Civil Rights Act of 1964, and by Part 15 of the Federal Aviation Regulations, as amended, the DeKalb County, Georgia (hereinafter called the "Sponsor") hereby covenants and agrees with the United States (hereinafter called the "Government") as follows:

The Sponsor in the operation and use of the DeKalb Peachtree Airport, will not on the grounds of race, color, or national origin discriminate or permit discrimination against any person or group of persons in any manner prohibited by Part 15 of the Federal Aviation Regulations.

The Sponsor will include, or require the inclusion of, the foregoing covenant in every agreement or concession pursuant to which any person or persons, other than the Sponsor, operates or has the right to operate any facility on the Airport providing services to the public, and a provision granting the Sponsor the right to take such action as the Government may direct to enforce such covenant.

Noncompliance with the above assurances shall constitute a material breach, and in the event of such noncompliance the Government may take appropriate action to enforce compliance, may terminate the Grant Agreement to which this covenant relates, or seek judicial enforcement.

The covenant shall become effective upon execution of a Grant Agreement pursuant to the above identified project application and shall constitute a part of the Grant Agreement to which it relates and shall remain in full force and effect so long as the airport covered by such Grant Agreement continues to be used and operated as a public airport.

DeKalb County, Georgia
(Name of Sponsor)

By: _____

April 5, 1968
(Date)

Title Brince H. Manning, Jr.
Chairman, Board of Commissioners
of Roads and Revenues

(Name of Sponsor)

By _____

(Date)

Title _____

SD FORM 5100-2 (7-66)

COMMENTS AND RECOMMENDATIONS
OF
STATE, METROPOLITAN OR REGIONAL PLANNING AGENCIES

DATE: March 22, 1968

Planning Agency:

Name Atlanta Region Metropolitan Planning Commission

Address 900 Glenn Building, Atlanta, Georgia 30303

Source of Authority for Establishment of Agency Georgia Laws, 1960 - Ga. Law 847

Grant Applicant:

Name DeKalb County

Address DeKalb Building, Decatur, Georgia 30030

Project Description: Project No.FAA 9-09-050-06

Paving of taxiways and aircraft parking areas at DeKalb-Peacntree Airport.

Certification:

The project described above does (X) does not ( ) conform with the comprehensive plan developed or in process of development for the metropolitan area in which it is located.

Comments and Recommendations:

In accordance with criteria for review and comment accepted by the ARMPC and dated April 26, 1967, the following response is indicated by the planning agency:

1. Project is consistent with regional air facility plan.
2. Project is consistent with local plans.
3. There is specific regional priority for the project. Project is consistent with airport development schedule.

(Signature)
Authorized Representative of Planning Agency

Form approved
Budget Bureau No. 61-R0066.1

UNITED STATES OF AMERICA
FEDERAL AVIATION AGENCY

PROJECT APPLICATION

(For Federal Aid for Development of Public Airports)

Part I–PROJECT INFORMATION

The DeKalb County, Georgia (herein called the "Sponsor") hereby makes application to the Federal Aviation Agency (hereinafter called the "FAA"), for a grant of Federal funds pursuant to the Federal Airport Act and the Regulations issued thereunder, for the purpose of aiding in financing a project (herein called the "Project") for development of the DeKalb-Peachtree Airport (herein called the "Airport") located in DeKalb County, State of Georgia.

It is proposed that the Project consist of the following-described airport development:

Acquire property interests in partial clear zone, SW end of NE-SW Runway, and land between extended center lines of Runways 16 and 20, and in land (partial clear zone for Runway 27) along east boundary of airport.

Acquire fee simple title to these properties described as: Land A (Item 1); Land B-1, B-2, B-3 (Item 2), and Parcels J, K, L, M, N, P and R (Item 3) on Exhibit "A".

all as more particularly described on the property map attached (hereto as Exhibit "A")* ~~(as Exhibit "A" to Project Application dated _____ for Project No. _____)~~*, and in the plans and specifications submitted to the FAA on 16 March 1962 (Rev. 4/30/62) which are made a part hereof.

*Strike out the inappropriate clause.

Form 7460-1(2-61) OBSOLETE PREVIOUS EDITION

THE FOLLOWING IS A SUMMARY OF THE ESTIMATED COSTS OF THE PROJECT:

ITEM	TOTAL ESTIMATED COST	ESTIMATED SPONSOR'S SHARE OF COST		ESTIMATED FEDERAL SHARE OF COST	
		AMOUNT	PER-CENT	AMOUNT	PER-CENT
1. LAND COSTS	$558,592	$279,296	50	$279,296	50
2. CONSTRUCTION COSTS	None				
3. ENGINEERING AND SUPERVISION COSTS	11,172				
4. ADMINISTRATIVE COSTS	11,172				
5. Total of 2, 3, and 4 above	22,344	11,172	50	11,172	50
6. CONTINGENCIES	33,516	16,758	50	16,758	50
7. TOTAL ALL ESTIMATED PROJECT COSTS (Items 1, 5, and 6)	$614,452	$307,226		$307,226	

Part II–REPRESENTATIONS

The Sponsor hereby represents and certifies as follows:

1. **Legal Authority.**–The Sponsor has the legal power and authority: (1) to do all things necessary in order to undertake and carry out the Project in conformity with the Act and the Regulations; (2) to accept, receive, and disburse grants of funds from the United States in aid of the Project, on the terms and conditions stated in the Act and the Regulations; and (3) to carry out all of the provisions of Parts III and IV of this Project Application.

2. **Funds.**–The Sponsor now has on deposit, or is in a position to secure, $ ~~307,226~~ for use in defraying the costs of the Project. The present status of these funds is as follows:

General Obligation Bonds

3. **Approvals of Other Agencies.**–The Project has been approved by all non-Federal agencies whose approval is required, namely:

None Required

4. **Defaults.**—The Sponsor is not in default on any obligation to the United States or any agency of the United States Government relative to the development, operation, or maintenance of any airport, except as stated herewith:

No Exception

5. **Possible Disabilities.**—There are no facts or circumstances (including the existence of effective or proposed leases, use agreements, or other legal instruments affecting use of the Airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project or carry out the provisions of Parts III and IV of the Project Application, either by limiting its legal or financial ability or otherwise, except as follows:

None

6. **Land.**—The Sponsor holds the following property interests in the following areas of land which are to be developed or used as part of or in connection with the Airport, subject to the following exceptions, encumbrances, and adverse interests, all of which areas[1] are identified on the aforementioned property map designated as Exhibit "A":

See report of Lawyers Title Insurance Company of Richmond, Virginia, dated March 14, 1962, No. BRD-32,139, attached hereto as Exhibit "D"

See Title Examination by Attorney Robert E. Mozley, dated June 5, 1963, attached hereto as Exhibit "C".

The Sponsor further certifies that the above is based on a title examination by a qualified attorney or title company and that such attorney or title company has determined that the Sponsor holds the above property interests.

[1] State character of property interest in each area and list and identify, for each all exceptions, encumbrances, and adverse interests of every kind and nature, including liens, easements, leases, etc. The separate areas of land need only be identified here by the area numbers shown on the property map.

Form 5AA-1621(1-62) OBSOLETE PREVIOUS EDITION

Part III—SPONSOR'S ASSURANCES

In order to furnish the assurances required by the Act and Regulations the Sponsor hereby covenants and agrees with the United States, as follows:

1. These covenants shall become effective upon acceptance by the Sponsor of an offer of Federal aid for the Project or any portion thereof, made by the FAA, and shall constitute a part of the Grant Agreement thus formed. These covenants shall remain in full force and effect throughout the useful life of the facilities developed under this Project, but in any event not to exceed twenty (20) years from the date of said acceptance of an offer of Federal aid for the Project.

2. The Sponsor will operate the Airport as such for the use and benefit of the public. In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically agrees that it will keep the Airport open to all types, kinds, and classes of aeronautical use without discrimination between such types, kinds, and classes: *Provided*, That the Sponsor may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the Airport as may be necessary for the safe and efficient operation of the Airport: *And Provided Further*, That the Sponsor may prohibit or limit any given type, kind, or class of aeronautical use of the Airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

3. The Sponsor will not exercise, grant, or permit any exclusive right for the use of the Airport forbidden by Section 308 of the Federal Aviation Act of 1958. In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically agrees that it will not either directly or indirectly exercise, or grant to any person, firm or corporation, or permit any person, firm, or corporation to exercise any exclusive right for the use of the Airport for commercial flight operations, including air carrier transportation, rental of aircraft, conduct of charter flights, operation of flight schools, or the carrying on of any other service or operation requiring the use of aircraft.

4. The Sponsor agrees that it will operate the Airport for the use and benefit of the public, on fair and reasonable terms, and without unjust discrimination. In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically covenants and agrees:

a. That in any agreement, contract, lease, or other arrangement under which a right or privilege at the Airport is granted to any person, firm, or corporation to render to the public any service (including the furnishing or sale of any aeronautical parts, materials, or supplies) essential to the operation of aircraft at the Airport, the Sponsor will insert and enforce provisions requiring the contractor:

(1) to furnish said service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and

(2) to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service: *Provided*, That the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

b. That it will not exercise or grant any right or privilege which would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own employees (including, but not limited to, maintenance and repair) that it may choose to perform.

c. In the event the Sponsor itself exercises any of the rights and privileges referred to in subsection *a*, the services involved will be provided on the same conditions as would apply to the furnishing of such services by contractors or concessionaires of the Sponsor under the provisions of such subsection *a*.

5. Nothing contained herein shall be construed to prohibit the granting or exercise of an exclusive right for the furnishing of nonaviation products and supplies or any service of a nonaeronautical nature or to obligate the Sponsor to furnish any particular nonaeronautical service at the Airport.

6. The Sponsor will operate and maintain in a safe and serviceable condition the Airport and all facilities thereon and connected therewith which are necessary to serve the aeronautical users of the Airport other than facilities owned or controlled by the United States, and will not permit any activity thereon which would interfere with its use for airport purposes: *Provided*, That nothing contained herein shall be construed to require that the Airport be operated for aeronautical uses during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance; *And Provided Further*, That nothing herein shall be construed as requiring the maintenance, repair, restoration or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the Sponsor.

7. Insofar as it is within its powers and reasonably possible, the Sponsor will, either by the acquisition and retention of easements or other interests in or rights for the use of land or airspace or by the adoption and enforcement of zoning regulations, prevent the construction, erection, alteration, or growth of any structure, tree or other object in the approach areas of the runways of the Airport, which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Section A of FAA Technical Standard Order No. N18, dated April 26, 1950, as amended. In addition, the Sponsor will not erect or permit the erection of any permanent structure or facility which would interfere materially with the use, operation, or future development of the Airport, in any portion of a runway approach area in which the Sponsor has acquired, or may hereafter acquire, property interests permitting it to so control the use made of the surface of the land.

8. All facilities of the Airport developed with Federal aid, and all those usable for the landing and taking-off of aircraft, will be available to the United States at all times, without charge, for use by military and naval aircraft in common with other aircraft, except that if the use by military and naval aircraft is substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining facilities so used, may be charged. Unless otherwise determined by the FAA, or otherwise agreed to by the Sponsor and the using agency, substantial use of an airport by military and naval aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the FAA, would unduly interfere with use of the landing area by other authorized aircraft, or during any calendar month that:

a. Five (5) or more military or naval aircraft are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement and each take-off as a movement) of military or naval aircraft is 300 or more, or the gross accumulative weight of military or naval aircraft using the Airport (the total movements of military or naval aircraft multiplied by gross certified weights of such aircraft) is in excess of five million pounds.

9. Whenever so requested by the FAA, the Sponsor will furnish without cost to the Federal Government, for construction, operation and maintenance of facilities for air traffic control activities, or weather-reporting activities and communication activities related to air traffic control, such areas of land or water, or estate therein, or rights in buildings of the Sponsor as the FAA may consider necessary or desirable for construction at Federal expense of space or facilities for such purposes. The approximate amounts of areas and the nature of the property interests and/or rights so required will be set forth in the Grant Agreement relating to the Project. Such areas or any portion thereof will be made available as provided herein within four months after receipt of written request from the FAA.

10. The Sponsor will furnish the FAA with such annual or special airport financial and operational reports as may be reasonably requested. Such reports may be submitted on forms furnished by the FAA, or may be submitted in such manner as the Sponsor elects so long as the essential data are furnished. The Airport and all airport records and documents affecting the Airport, including deeds, leases, operation and use agreements, regulations, and other instruments, will be made available for inspection by any duly authorized representative of the FAA upon reasonable request. The Sponsor will furnish to the FAA, upon request, a true copy of any such document.

11. The Sponsor will not enter into any transaction which would operate to deprive it of any of the rights and powers necessary to perform any or all of the covenants made herein, unless by such transaction the obligation to perform all such covenants is assumed by another public agency found by the FAA to be eligible under the Act and the Regulations to assume such obligations and having the power, authority, and financial resources to carry out all such obligations. If an arrangement is made for management or operation of the Airport by any agency or person other than the Sponsor or an employee of the Sponsor, the Sponsor will reserve sufficient rights and authority to insure that the Airport will be operated and maintained in accordance with the Act, the Regulations, and these covenants.

12. The Sponsor will keep up to date at all times a master plan layout of the Airport showing: (1) the boundaries of the Airport and of all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the Sponsor for airport purposes, and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such master plan layout, and each amendment, revision, or modification

Part IV–PROJECT AGREEMENT

If the Project or any portion thereof is approved by the FAA, and an offer of Federal aid for such approved Project is accepted by the Sponsor, it is understood and agreed that all airport development included in such Project will be accomplished in accordance with the Act and the Regulations, the plans and specifications for such development, as approved by the FAA, and the Grant Agreement with respect to the Project.

IN WITNESS WHEREOF, the Sponsor has caused this Project Application to be duly executed in its name, this 13th day of June, 19 63

DeKalb County, Georgia
(Name of Sponsor)

By C. O. Emmerich
C. O. Emmerich
Chairman, DeKalb County
Board of Commissioners
of Roads and Revenues

OPINION OF SPONSOR'S ATTORNEY

I HEREBY CERTIFY that all statements of law made in this Project Application and all legal conclusions upon which the representations and covenants contained herein are based, are in my opinion true and correct.

George P. Dillard

DeKalb County Attorney
(Title)

13 June 1963
(Date)

A.E.D.O.
ATLANTA, GA.

Form approved
Budget Bureau No. 65-R005.1

UNITED STATES OF AMERICA
FEDERAL AVIATION AGENCY

PROJECT APPLICATION

(For Federal Aid for Development of Public Airports)

Part I–PROJECT INFORMATION

The DeKalb County, Georgia (herein called the "Sponsor") hereby makes application to the Federal Aviation Agency (hereinafter called the "FAA"), for a grant of Federal funds pursuant to the Federal Airport Act and the Regulations issued thereunder, for the purpose of aiding in financing a project (herein called the "Project") for development of the DeKalb-Peachtree Airport (herein called the "Airport") located in DeKalb County
State of Georgia

It is proposed that the Project consist of the following-described airport development:

Acquire property interests in partial clear zone, SW end of NE-SW runway, and land between extended centerlines of Runways 16 and 20, and in land (partial clear zone for Runway 27) along East boundary of airport.

Acquire fee simple title to these properties described as: Tract A (Item 1); Tracts B-1, B-2, B-3 (Item 2); and Tracts J, K, L, M, N, P and R (Item 3) on Exhibit "A".

all as more particularly described on the property map attached (hereto as Exhibit "A") ~~(as Exhibit "A" to Project Application dated _____ for Project No. _____)~~, and in the plans and specifications submitted ~~to the FAA~~ which are ~~annexed thereto~~.

*Strike out the inapplicable clause.

Form FAA-1624(1-62) OBSOLETE PREVIOUS EDITION

BEST COPY AVAILABLE

THE FOLLOWING IS A SUMMARY OF THE ESTIMATED COSTS OF THE PROJECT:

ITEM	TOTAL ESTIMATED COST	ESTIMATED SPONSOR'S SHARE OF COST		ESTIMATED FEDERAL SHARE OF COST	
		AMOUNT	PERCENT	AMOUNT	PERCENT
1. LAND COSTS	568,092	284,046	50	284,046	50
2. CONSTRUCTION COSTS	-				
3. ENGINEERING AND SUPERVISION COSTS	9,508				
4. ADMINISTRATIVE COSTS	-				
5. Total of 2, 3, and 4 above	9,508	4,754	50	4,754	50
6. CONTINGENCIES	18,400	9,200	50	9,200	50
7. TOTAL ALL ESTIMATED PROJECT COSTS (Items 1, 5, and 6)	596,000	298,000		298,000	

Part II—REPRESENTATIONS

The Sponsor hereby represents and certifies as follows:

1. **Legal Authority.**—The Sponsor has the legal power and authority: (1) to do all things necessary in order to undertake and carry out the Project in conformity with the Act and the Regulations; (2) to accept, receive, and disburse grants of funds from the United States in aid of the Project, on the terms and conditions stated in the Act and the Regulations; and (3) to carry out all of the provisions of Parts III and IV of this Project Application.

2. **Funds.**—The Sponsor now has on deposit, or is in a position to secure, $ 298,000 for use in defraying the costs of the Project. The present status of these funds is as follows:

General Obligation Bonds

3. **Approvals of Other Agencies.**—The Project has been approved by all non-Federal agencies whose approval is required, namely:

None required.

4. **Defaults.**—The Sponsor is not in default on any obligation to the United States or any agency of the United States Government relative to the development, operation, or maintenance of any airport, except as stated herewith:

None

5. **Possible Disabilities.**—There are no facts or circumstances (including the existence of effective or proposed leases, use agreements, or other legal instruments affecting use of the Airport or the existence of pending litigation or other legal proceedings) which in reasonable probability might make it impossible for the Sponsor to carry out and complete the Project or carry out the provisions of Parts III and IV of the Project Application, either by limiting its legal or financial ability or otherwise, except as follows:

None

6. **Land.**—The Sponsor holds the following property interests in the following areas of land which are to be developed or used as part of or in connection with the Airport, subject to the following exceptions, encumbrances, and adverse interests, all of which areas[1] are identified on the aforementioned property map designated as Exhibit "A":

Tract No. 1 free and clear of reversionary interests except those contained in a Quitclaim Deed by and between the United States of America and DeKalb County, Georgia, dated February 15, 1960.

Tract No. 2 free and clear of all reversionary interests except those contained in a Quitclaim Deed dated March 27, 1961.

Fee simple title to Tracts C, D, E, F, G and H; Tracts A and B-1.

The Sponsor further certifies that the above is based on a title examination by a qualified attorney or title company and that such attorney or title company has determined that the Sponsor holds the above property interests.

[1] State character of property interest in each area and list and identify by each all encumbrances, and adverse interests of every kind and nature, including liens, easements, leases, etc. The separate areas of land need only be identified here by the area numbers shown on the property map.

Part III—SPONSOR'S ASSURANCES

In order to furnish the assurances required by the Act and Regulations the Sponsor hereby covenants and agrees with the United States, as follows:

1. These covenants shall become effective upon acceptance by the Sponsor of an offer of Federal aid for the Project or any portion thereof, made by the FAA, and shall constitute a part of the Grant Agreement thus formed. These covenants shall remain in full force and effect throughout the useful life of the facilities developed under this Project, but in any event not to exceed twenty (20) years from the date of said acceptance of an offer of Federal aid for the Project.

2. The Sponsor will operate the Airport as such for the use and benefit of the public. In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically agrees that it will keep the Airport open to all types, kinds, and classes of aeronautical use without discrimination between such types, kinds, and classes: *Provided*, That the Sponsor may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the Airport as may be necessary for the safe and efficient operation of the Airport: *And Provided Further*, That the Sponsor may prohibit or limit any given type, kind, or class of aeronautical use of the Airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

3. The Sponsor will not exercise, grant, or permit any exclusive right for the use of the Airport forbidden by Section 308 of the Federal Aviation Act of 1958. In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically agrees that it will not either directly or indirectly exercise, or grant to any person, firm or corporation, or permit any person, firm, or corporation to exercise any exclusive right for the use of the Airport for commercial flight operations, including air carrier transportation, rental of aircraft, conduct of charter flights, operation of flight schools, or the carrying on of any other service or operation requiring the use of aircraft.

4. The Sponsor agrees that it will operate the Airport for the use and benefit of the public, on fair and reasonable terms, and without unjust discrimination. In furtherance of this covenant (but without limiting its general applicability and effect), the Sponsor specifically covenants and agrees:

a. That in any agreement, contract, lease, or other arrangement under which a right or privilege at the Airport is granted to any person, firm, or corporation to render to the public any service (including the furnishing or sale of any aeronautical parts, materials, or supplies) essential to the operation of aircraft at the Airport, the Sponsor will insert and enforce provisions requiring the contractor:

(1) to furnish said service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and

(2) to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service: *Provided*, That the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

b. That it will not exercise or grant any right or privilege which would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own employees (including, but not limited to, maintenance and repair) that it may choose to perform.

c. In the event the Sponsor itself exercises any of the rights and privileges referred to in subsection *a*, the services involved will be provided on the same conditions as would apply to the furnishing of such services by contractors or concessionaires of the Sponsor under the provisions of such subsection *a*.

5. Nothing contained herein shall be construed to prohibit the granting or exercise of an exclusive right for the furnishing of nonaviation products and supplies or any service of a nonaeronautical nature or to obligate the Sponsor to furnish any particular nonaeronautical service at the Airport.

6. The Sponsor will operate and maintain in a safe and serviceable condition the Airport and all facilities thereon and connected therewith which are necessary to serve the aeronautical users of the Airport other than facilities owned or controlled by the United States, and will not permit any activity thereon which would interfere with its use for airport purposes: *Provided*, That nothing contained herein shall be construed to require that the Airport be operated for aeronautical uses during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance; *And Provided Further*, That nothing herein shall be construed as requiring the maintenance, repair, restoration or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the Sponsor.

7. Insofar as it is within its powers and reasonably possible, the Sponsor will, either by the acquisition and retention of easements or other interests in or rights for the use of land or airspace or by the adoption and enforcement of zoning regulations, prevent the construction, erection, alteration, or growth of any structure, tree or other object in the approach areas of the runways of the Airport, which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Section A of FAA Technical Standard Order No. N18, dated April 26, 1950), as amended. In addition, the Sponsor will not erect or permit the erection of any permanent structure or facility which would interfere materially with the use, operation, or future development of the Airport, in any portion of a runway approach area in which the Sponsor has acquired, or may hereafter acquire, property interests permitting it to so control the use made of the surface of the land.

8. All facilities of the Airport developed with Federal aid, and all those usable for the landing and taking-off of aircraft, will be available to the United States at all times, without charge, for use by military and naval aircraft in common with other aircraft, except that if the use by military and naval aircraft is substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining facilities so used, may be charged. Unless otherwise determined by the FAA, or otherwise agreed to by the Sponsor and the using agency, substantial use of an airport by military and naval aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the FAA, would unduly interfere with use of the landing area by other authorized aircraft, or during any calendar month that:

a. Five (5) or more military or naval aircraft are regularly based at the airport or on land adjacent thereto; or

b. The total number of movements (counting each landing as a movement and each take-off as a movement) of military or naval aircraft is 300 or more, or the gross accumulative weight of military or naval aircraft using the Airport (the total movements of military or naval aircraft multiplied by gross certified weights of such aircraft) is in excess of five million pounds.

9. Whenever so requested by the FAA, the Sponsor will furnish without cost to the Federal Government, for construction, operation and maintenance of facilities for air traffic control activities, or weather-reporting activities and communication activities related to air traffic control, such areas of land or water, or estate therein, or rights in buildings of the Sponsor as the FAA may consider necessary or desirable for construction at Federal expense of space or facilities for such purposes. The approximate amounts of areas and the nature of the property interests and/or rights so required will be set forth in the Grant Agreement relating to the Project. Such areas or any portion thereof will be made available as provided herein within four months after receipt of written request from the FAA.

10. The Sponsor will furnish the FAA with such annual or special airport financial and operational reports as may be reasonably requested. Such reports may be submitted on forms furnished by the FAA, or may be submitted in such manner as the Sponsor elects so long as the essential data are furnished. The Airport and all airport records and documents affecting the Airport, including deeds, leases, operation and use agreements, regulations, and other instruments, will be made available for inspection by any duly authorized representative of the FAA upon reasonable request. The Sponsor will furnish to the FAA, upon request, a true copy of any such document.

11. The Sponsor will not enter into any transaction which would operate to deprive it of any of the rights and powers necessary to perform any or all of the covenants made herein, unless by such transaction the obligation to perform all such covenants is assumed by another public agency found by the FAA to be eligible under the Act and the Regulations to assume such obligations and having the power, authority, and financial resources to carry out all such obligations. If an arrangement is made for management or operation of the Airport by any agency or person other than the Sponsor or an employee of the Sponsor, the Sponsor will reserve sufficient rights and authority to insure that the Airport will be operated and maintained in accordance with the Act, the Regulations, and these covenants.

12. The Sponsor will keep up to date at all times a master plan layout of the Airport showing: (1) the boundaries of the Airport and of all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the Sponsor for airport purposes, and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars, and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon. Such master plan layout, and each amendment, revision, or modification

thereof, shall be subject to the approval of the FAA, which approval shall be evidenced by the signature of a duly authorized representative of the FAA on the face of the master plan layout. The Sponsor will not make or permit the making of any changes or alterations in the Airport or any of its facilities other than in conformity with the master plan layout as so approved by the FAA, if such changes or alterations might adversely affect the safety, utility, or efficiency of the Airport.

13. (*a*) The Sponsor will acquire within a reasonable time, but in any event prior to the start of any construction work under the Project, the following property interests in the following areas of land [1] on which such construction work is to be performed, all of which areas are identified on the property map which is attached hereto and identified as Exhibit "A":

None

(*b*) The Sponsor will acquire within a reasonable time, and if feasible prior to the completion of all construction work under the Project, the following property interests in the following areas of land [1] which are to be developed or used as part of or in connection with the Airport as it will be upon completion of the Project, all of which areas are identified on the property map which is attached hereto and identified as Exhibit "A":

Tracts B-2, B-3, J, K, L, M, N, P and R.

14. If at any time it is determined by the FAA that there is any outstanding right or claim of right in or to the Airport property, other than those set forth in paragraph 6 of Part II and paragraphs 13(*a*) and 13(*b*) of this Part, the existence of which creates an undue risk of interference with the operation of the Airport or the performance of the covenants of this Part, the Sponsor will acquire, extinguish, or modify said right or claim of right in a manner acceptable to the FAA.

15. Unless the context otherwise requires, all terms used in these covenants which are defined in the Act and the Regulations shall have the meanings assigned to them therein.

[1] State clearly nature of property not to be acquired in each area and list and identify for each all easements, rights-of-way, and other interests in property to be acquired and nature of building items, construction, leases, etc. The separate areas of land may be identified here by the area numbers shown on the property map.

Part IV–PROJECT AGREEMENT

If the Project or any portion thereof is approved by the FAA, and an offer of Federal aid for such approved Project is accepted by the Sponsor, it is understood and agreed that all airport development included in such Project will be accomplished in accordance with the Act and the Regulations, the plans and specifications for such development, as approved by the FAA, and the Grant Agreement with respect to the Project.

IN WITNESS WHEREOF, the Sponsor has caused this Project Application to be duly executed in its name, this 13th day of June, 19 63.

DeKalb County, Georgia
(Name of Sponsor)

By _____

Vice-Chairman, DeKalb County
Board of Commissioners of
Roads and Revenues

OPINION OF SPONSOR'S ATTORNEY

I HEREBY CERTIFY that all statements of law made in this Project Application and all legal conclusions upon which the representations and covenants contained herein are based, are in my opinion true and correct.

RECEIVED
JUL 1 1963
A.D.D.O.
ATLANTA, GA.

_____

Asst.
DeKalb County Attorney
(Title)

June 13, 1963
(Date)

AMERICAN HOME ASSURANCE COMPANY
NEW YORK, NEW YORK

AVIATION LIABILITY POLICY
Issued through
WESTMINSTER
INSURANCE MANAGERS, INC.
275 FOREST AVENUE
PARAMUS, NEW JERSEY 07652
TELEPHONE AREA CODE 201 265-4515
WESTERN UNION TELEX 13-4328

PLEASE READ YOUR POLICY

IN EVENT OF ACCIDENT

et named ate first aid for all injured parties.

rotect the aircraft whether the loss is insured or not.

ive no statements to anyone except police officers, .A.A. officials (or other government officials having isdiction over civil aviation) and your Insurance Cem- any representative.

4. Secure all possible information including names and addresses of those involved and witnesses.

5. Report all accidents to Westminster Insurance Managers, Inc. promptly. If FONLY INJURY is involved Telex or Telephone and follow with written report.

"In no, to an ever greater extent than the sea, is terribly unforgiving of any carelessness, incapacity or neglect".

AMERICAN HOME ASSURANCE COMPANY
NEW YORK, NEW YORK
(A stock company, hereinafter called the company)

In consideration of the payment of the premium and in reliance upon the statements in the declarations and subject to the limits of liability, exclusions, conditions and other terms of this policy to which this insurance is subject, or as otherwise herein provided, this policy witnesseth that the company agrees with the named insured, in accordance with the coverages hereof indicated by specific premium charge or charges as set forth in the declarations.

Insuring Agreements

Coverages Defined:

Liability. To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of:

A — Bodily Injury sustained by any person except a passenger;

B — Property Damage, injury to property of others;

C — Passenger, injury sustained by any passenger;

D — Single Limit, injury sustained by any person and injury to property of others;

E — Single Limit, injury sustained by any person, except a passenger and injury to property of others,

arising out of the ownership, maintenance or use of the aircraft;

F — Medical Coverage. To pay all reasonable expenses incurred within one year from the date of accident, for necessary medical, surgical, dental, ambulance, hospital, professional nursing and funeral services, to or for each passenger who sustains injury caused by accident, whether the insured named herein or any person or organization legally entitled to be covered thereunder, or other than employees of the aircraft owner, while the aircraft is being used by the insured or with his permission. This Coverage shall not apply to any passenger, or other than employees of the aircraft owner, while engaged in employment of any kind or duty in the aircraft.

Hull Coverages — To pay for direct loss of or damage to the aircraft, subject to the exclusions, conditions and other terms of this policy which relate to Hull Coverages.

Coverage G — All Risks of Physical Loss or Damage to the Aircraft. The aircraft shall be presumed lost if flight of aircraft has been attempted and it has not reached any of its scheduled destinations within sixty days thereafter.

Coverage H — All Risks of physical loss or damage to the aircraft while not in flight.

Coverage I — All Risks of physical loss or damage to the aircraft while not in flight.

Coverage J — As endorsed hereon.

effective on August 23, 19 63 attached to and forming part of Policy No. _____

to American Home Assurance Company

insuring Board of Commissioners of the Road Dept. of DeKalb County

Countersigned
Westminster
Insurance Managers, Inc.
for the Company

745 Ltd. No. ____ Page 1

I. Defense, Settlement, Supplementary Payments (Coverages A, B, C, D and E). As respects such insurance as is afforded by this policy with respect to the ownership, maintenance or use of aircraft, the company shall defend any suit against the insured seeking damages on account of such bodily injury, sickness or death or property damage, even if any of the allegations of the suit are groundless, false or fraudulent, but the company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient. In addition, the company will pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such suit, all costs taxed against the insured in any such suit and all interest accruing after entry of judgment until the company has paid, tendered or deposited in court such part of such judgment as does not exceed the limit of the company's liability thereon. Coverage by the insured, as the need of bodily injury liability or damage to property may arise, and the company's duty to defend any suit against the insured for the purpose of such coverage, shall cease when the limit of such liability has been exhausted by payment of judgments or settlements.

The company agrees to pay the amounts incurred as for this insuring agreement, all settlements of claims and suits, in addition to the applicable limit of liability of this policy.

II. Definition of "Insured" (Coverages A, B, C, D, E and F). The unqualified word "insured" wherever used in this policy includes not only the named insured but also any person while using the aircraft and any person or organization legally responsible for the use thereof, provided the actual use is with the permission of the named insured. The insurance afforded by the provisions of this paragraph II does not apply: (a) to any person or organization with respect to bodily injury, sickness, disease or death of any person who is a named insured, or to any employee or official of an insured with respect to bodily injury, sickness, disease or death of another employee of the same insured incurred in the course of such employment or to property owned or transported by or in the charge of any named insured or of the employer of such named insured or, if the named insured is a partnership, of any partner thereof, or to property rented to or in charge of any named insured or of the employer of such named insured or, if the named insured is a partnership, of any partner thereof, or to property rented to or in charge of any such employer, other than property customarily used in the ownership, maintenance or use of aircraft or ground equipment thereof; (b) to any aircraft or aircraft part or property, other than (1) aircraft owned by the named insured or (2) aircraft not owned by the named insured while in the sole charge, custody or control of the named insured or any employee of the named insured, or (3) aircraft owned by an employee of the named insured provided such aircraft is not used in the business of such named insured; (c) to any aircraft while used in any race, contest, exhibition or speed test, or any preparation therefor, or while used for the purpose of parachute jumping; (d) to any aircraft while used for any purpose other than those permitted by the certificate of airworthiness issued by the Federal Aviation Agency or by the government of the country in which such aircraft is registered; (e) to any aircraft while used for any unlawful purpose; (f) to any aircraft while operated in any race, contest or speed test, or any practice or preparation for any of the foregoing, unless specifically endorsed hereon; (g) to any aircraft while used for the carriage of persons or property for compensation or hire, or for any instruction for which the insured receives compensation, unless specifically endorsed hereon; (h) to any aircraft while used for any purpose in connection with the sale, lease, repair, storage, testing, demonstration or delivery of aircraft owned by the insured or held by the insured for sale or lease; (i) to any aircraft while used for any purpose in connection with the manufacture, assembly or distribution of aircraft by the insured; (j) to any aircraft while used for the purpose of crop dusting, seeding, spraying or bird chasing, or any form of fumigation or application of chemicals or other substances; (k) to any aircraft while used for the purpose of fire fighting, fire patrol or fire control; (l) to any aircraft while used for the purpose of search and rescue operations; (m) to any aircraft while used for the purpose of aerial surveying, photography, exploration, geophysical prospecting or mineral development; (n) to any aircraft while used for the purpose of pipeline location or examination; (o) to any aircraft while used for the purpose of forest fire, wildlife or game conservation or management; (p) to any aircraft while used for the purpose of glider towing or banner towing; (q) to any aircraft while used for the purpose of pilot training; (r) to any aircraft while used for the purpose of testing for any of the purposes listed in (c) through (q) above; (s) to any aircraft while used for the purpose of any operation not listed in (c) through (q) above which is hazardous to persons or property on the ground; (t) to any aircraft while used for the purpose of any operation not listed in (c) through (q) above which is hazardous to persons or property on the ground; (u) to any aircraft while used for the purpose of any operation not listed in (c) through (q) above which is hazardous to persons or property on the ground; (v) to any aircraft while used for the purpose of any operation not listed in (c) through (q) above which is hazardous to persons or property on the ground; (w) to any aircraft while used for the purpose of any operation not listed in (c) through (q) above which is hazardous to persons or property on the ground; (x) to any aircraft while used for the purpose of any operation not listed in (c) through (q) above which is hazardous to persons or property on the ground; (y) to any aircraft while used for the purpose of any operation not listed in (c) through (q) above which is hazardous to persons or property on the ground; (z) to any aircraft while used for the purpose of any operation not listed in (c) through (q) above which is hazardous to persons or property on the ground.

III. Use of Other Aircraft (Pleasure and Business or Industrial Aid Uses Only—Coverages A, B, C, D, E and F). Such insurance as is afforded by this policy with respect to the aircraft applies to the named insured if an individual and the owner of such aircraft with respect to the operation of any other aircraft of similar type, horsepower and seating capacity by such named insured or with consent of the owner of such aircraft, provided such other aircraft is not owned by, furnished or hired for the regular use of, or regularly available to the named insured or any resident of the household of the named insured. This insuring agreement shall not apply: (a) to any aircraft owned or hired by the named insured or any employee of the named insured, or (b) to any aircraft while used in the business of the named insured, or (c) to any aircraft while used in any race, contest, exhibition or speed test, or any preparation therefor, or (d) to any aircraft while used for the purpose of parachute jumping, or (e) to any aircraft while used for the purpose of crop dusting, seeding, spraying or bird chasing, or any form of fumigation or application of chemicals or other substances, or (f) to any aircraft while used for the purpose of fire fighting, fire patrol or fire control, or (g) to any aircraft while used for the purpose of search and rescue operations, or (h) to any aircraft while used for the purpose of aerial surveying, photography, exploration, geophysical prospecting or mineral development, or (i) to any aircraft while used for the purpose of pipeline location or examination, or (j) to any aircraft while used for the purpose of forest fire, wildlife or game conservation or management, or (k) to any aircraft while used for the purpose of glider towing or banner towing, or (l) to any aircraft while used for the purpose of pilot training, or (m) to any aircraft while used for the purpose of testing for any of the purposes listed in (c) through (l) above, or (n) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (o) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (p) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (q) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (r) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (s) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (t) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (u) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (v) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (w) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (x) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (y) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (z) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground.

IV. Use of Other Aircraft (Pleasure and Business or Industrial Aid Uses Only—Coverages A, B, C, D, E and F). Such insurance as is afforded by this policy with respect to the aircraft applies to the named insured if an individual and the owner of such aircraft with respect to the operation of any other aircraft of similar type, horsepower and seating capacity by such named insured or with consent of the owner of such aircraft, provided such other aircraft is not owned by, furnished or hired for the regular use of, or regularly available to the named insured or any resident of the household of the named insured. This insuring agreement shall not apply: (a) to any aircraft owned or hired by the named insured or any employee of the named insured, or (b) to any aircraft while used in the business of the named insured, or (c) to any aircraft while used in any race, contest, exhibition or speed test, or any preparation therefor, or (d) to any aircraft while used for the purpose of parachute jumping, or (e) to any aircraft while used for the purpose of crop dusting, seeding, spraying or bird chasing, or any form of fumigation or application of chemicals or other substances, or (f) to any aircraft while used for the purpose of fire fighting, fire patrol or fire control, or (g) to any aircraft while used for the purpose of search and rescue operations, or (h) to any aircraft while used for the purpose of aerial surveying, photography, exploration, geophysical prospecting or mineral development, or (i) to any aircraft while used for the purpose of pipeline location or examination, or (j) to any aircraft while used for the purpose of forest fire, wildlife or game conservation or management, or (k) to any aircraft while used for the purpose of glider towing or banner towing, or (l) to any aircraft while used for the purpose of pilot training, or (m) to any aircraft while used for the purpose of testing for any of the purposes listed in (c) through (l) above, or (n) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (o) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (p) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (q) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (r) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (s) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (t) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (u) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (v) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (w) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (x) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (y) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground, or (z) to any aircraft while used for the purpose of any operation not listed in (c) through (l) above which is hazardous to persons or property on the ground.

V. Temporary Use of Substitute Aircraft (Coverages A, B, C, D, E and F). While an aircraft owned by the named insured is withdrawn from use because of its breakdown, repair, servicing, loss or destruction, such insurance as is afforded by this policy with respect to such aircraft applies with respect to any substitute aircraft of similar type, horsepower and seating capacity not owned by the named insured or by the substitute aircraft or any agent or employee of such owners.

VI. Automatic Insurance for Newly Acquired Aircraft (Pleasure and Business or Industrial Aid Uses Only) Liability, Medical and Hull Coverages A, B, C, D, E, F, G, H and I). If the named insured who is the owner of the aircraft acquires ownership of another aircraft of similar type, horsepower and seating capacity and notifies the company within ten days following the date of its delivery to him, such insurance as is afforded by this policy applies also to such aircraft as of such delivery date, but if a registered or licensed aircraft is involved, only to the extent the insurance is applicable to the replaced aircraft, or (b) if it is an additional aircraft and if the company insures all aircraft owned by the named insured at such delivery date.

Unless otherwise agreed in writing between the named insured or the Company, the Coverages Limits of Liability and Amount of Insurance for such newly acquired aircraft shall be as follows:

(a) Liability and Medical Coverages—not to exceed the limits originally provided for any owned aircraft,

(b) Hull Coverages—the actual cost of the aircraft to the named insured, but not to exceed the highest amount of insurance on any described aircraft and subject to the same deductibles.

This insuring agreement does not apply: (a) to any loss against which the named insured has other valid and collectible insurance, or (b) except during the ferry period, but if such delivery date is prior to the effective date of this policy, the insurance applies as of such effective date.

The named insured shall pay any additional premium required because of the application of the insurance to such other aircraft. The insurance terminates upon a replaced aircraft on the delivery time and date.

VII. Occurrences, Policy Period, Territory, Purpose of Use. This policy applies only to occurrences during the policy period while the aircraft is within the United States of America (excluding Alaska), Canada, or the Republic of Mexico, or is being transported between ports thereof, and is owned, maintained and used for the purposes stated on applicable therein.

Exclusions

This policy does not apply:

A. to bodily injury, sickness, disease or death of any employee of the insured while engaged in the duties of his employment or to any obligation for which the insured or any company as his insurer may be held liable under any Workmen's Compensation law;

B. to liability assumed by the insured under any contract or agreement;

C. while, with the knowledge and consent of the insured—

(a) the aircraft is being operated by an operator not properly certificated by the Federal Aviation Agency with respect to the type and limitations of the Federal Aviation Agency Standard Airworthiness Certificate;

(b) the aircraft is being used for any unlawful purpose; or

(c) the aircraft is being operated in any race, contest or speed test, or any practice or preparation for any of the foregoing, unless specifically endorsed hereon;

D. to property owned by the insured, to property rented to, used by, or in the care, custody or control of the insured or any employee of the insured, or to property transported by the insured, except (1) property (other than cargo) carried in or upon or attached to the aircraft, or (2) property (other than cargo) carried in or upon or attached to any automobile not owned by the insured while such property is being transported solely for the purpose of ground movement of the aircraft to or from the premises on which the aircraft is hangared, maintained or stored;

E. to property damage arising out of the use of the aircraft by the insured in any business or employment, other than (1) the operation of the aircraft by the insured solely for pleasure or personal transportation, (2) the operation of the aircraft by the insured in the business of aerial photography, exploration, geophysical prospecting, mineral development, pipeline location or examination, forest fire, wildlife or game conservation or management, flying club or the manufacture of aircraft, aircraft engines or aircraft accessories;

F. (None)

(a) to loss or damage or any liability of the insured resulting from, caused by, arising out of, or any way connected with hostile acts, warlike action, insurrection, rebellion, revolution, civil war, usurped power, or any action taken to hinder or defend against any of these, regardless of whether such loss or damage or liability is caused directly or indirectly by using of any weapon employing atomic energy or by or on behalf of any person acting for any political faction, and regardless of any other cause or event contributing concurrently or in any sequence to such loss or damage or liability. The word "hostile" includes offensive, but does not imply any particular degree of organized violence,

(b) the liability of the Company arising out of any agreement entered into by or on behalf of the insured and assumed by the Company under the terms of the Policy shall not exclude any liability in respect of claims or suits for damages because of bodily injury or property damage caused by any of the perils excluded in paragraph (a),

(c) with respect to any provision in the Policy conferring or delegating to the Company or related adjusters such powers, duties or discretions, the Company shall not be required to defend:

(i) damages not actually against the insured and

(ii) defense fees and expenses incurred by the insured.

G. Other Policies

H. Other Risks

I. Limitation of Liability

...ment: Board of Commissioners for Co. for the County Court

...ed: the Hale County Commissioners, Incorporated, municipality Deed

...cy Period: From 12:01 A.M. ☐ P.M. August 6, 1972 To August 6, 1973

...t of Insured: Municipality

...ft Insured at

Insurable Interest:

LIABILITY COVERAGES	LIMITS OF LIABILITY: Each Person	LIMITS OF LIABILITY: Each Occurrence	LIABILITY PREMIUMS	HULL COVERAGES IDENTIFIED BY:
Liability (except Passengers)	$	$	$	G. All Risks
Property Damage	XXXX			H. All Risks not in motion
Passengers				I. All Risks not in flight
Medical Payments XXXX	XXXX	XXXX		J. As endorsed
Hull: ☐ Comp. ☐ Coll. ☐ Fire ☐ Theft			1500.	
Aircraft Spares No. 1	2,200			DEDUCTIBLES Exp. Aircraft Fire Loss Except Fire, Wind, Lightning, and Explosion.
The limit of liability for any one Passenger shall not exceed	$	Total Premium	$ 1500.	

DESCRIPTION OF AIRCRAFT or HULL COV. [illegible]

Make and Model	F.A.A. Registration Number	Long Plane Speed Vc Safety Vc	Years Model	Original Model Cost or Cost Age	Amount of Insurance	Hull Premium	Not In Motion	In Motion
Does Not Apply					$	$	$	$ -

F.A.A. Category: [ ] Normal [ ] Restricted — Breach of Warranty Premium — ** Undisclosed Deductible

F.A.A. Class: [ ] Utility [ ] Aerobatic [ ] Standard [ ] Transport [ ] Limited [ ] Experimental — **$ — Hull Premium $ — Policy Premium $ 1500.

Deductible applies to each loss from Collision, Cyclone, Tornado, Hail, Sleet, Snow or Theft unless otherwise specifically designated in these spaces.

Does Not Apply

Remarks, if any (use reverse)

In consideration, as charged by the undersigned, as stated by the insured to the company, pertaining to the operation and use of the insured aircraft as stated above, the insured and the undersigned hereby are fully covered by the aircraft policy conditions stated on Items A and B above, if a premium is indicated for coverage A and B above, less, if any, similar coverages C, D, E and F shall be payable to the insured named and to such mortgagee named as may appear.

Broker: Fairfax Underwriters Services, Inc. 127 N. 10th St., Kansas City, Mo.

Accepted by _____ _____

Rev. 4-72 (Kans.) — See Reverse side for Policy Conditions — Form Continued

Liability Insurance

SECTION I PREMISES — Operations

Location (Premises Number, Street, City, County and State)	Part Occupied by Insured	Limits of Liability Bodily Injury Each Person	Limits of Liability Bodily Injury Each Occurrence
	Lessee	$ 250.	$ 500.

SECTION II PRODUCTS

Classification	Estimated Sales	Rate Per $1000 of Sales (Bodily Injury and Property Damage Combined)	Advance Premium
	$	$	$

Rate — B.I. $ _____ P.D. $ _____ Single Limit $ _____

SECTION III CONTRACTUAL — Description of Contract

Rate Bodily Injury	Rate Property Damage	Advance Premium
		$

Rate Limited P.D. $

SECTION IV ALTERATIONS — Description

Rate Bodily Injury	Rate Property Damage	Advance Premium
		$

Rate Protective Limit — P.D. $

SECTION V HANGARKEEPERS LEGAL LIABILITY

	Per Peril Each Aircraft	Per Peril Any One Loss
	X X X	$

Rate Of Liability Any One Aircraft $ _____ Any One Loss $ _____

Exposure Hangarage

Including Taxes ☐ Excluding Taxes Deductible Each Aircraft, Each Loss $ _____

Advance Premium	Sect. I	Sect. II	Sect. III	Sect. IV	TOTAL ADVANCE PREMIUM
For Injury	$ 250.	$	$	$	$
To Property Damage	$	$	$	$	$ 250.
Limit	$	$	$	$	

This endorsement, including all provisions and stipulations set forth herein, is attached to and forms part of Policy No. _____

effective _____ 19 _____ at 12 o'clock noon Standard Time at the place covered by said Policy and is subject to all the terms and conditions of said Policy except as herein provided.

Attached to and forming part of Policy No. _____ issued by _____ County

to _____

of Insured _____ Address _____

Countersigned

Insurance Agency, Inc.

By _____

Authorized Agent

A 9-65

[illegible]

[illegible]

[illegible]

"Limit of Contribution of Political Subdivision"

dorsement, effective August 6, 1973 (12:01 A.M., standard time, at the address of the insured) forms a part of policy No. 21033

ider- ☐ Additional Premium } of $ .ill for days
☐ Return Premium } in of $

ely Understood and Agreed that:

The premium for the policy is due and payable as follows:

August 6, 1973 $500.
August 6, 1974 $500.
August 6, 1975 $500.

Waiver of Governmental Immunity

"It is agreed that the company waives any right to deny liability under the policy or to refuse payment within the limits thereof by reason of exemption-liability of the insured political subdivision for the wrongful or negligent acts of its agents and employees and its immunity from suit as an agency of the State performing governmental function."

the following pages, if any, are a part of this endorsement. All other terms and conditions of unchanged.

Westminster Insurance Managers, Inc.

For the Company

End. No. 2 Page 1

BEST COPY AVAILABLE

issued to [illegible]

This endorsement, effective [illegible] forms a part of policy No. 21033
(12:01 A.M., standard time, at the address of the insured)

In Consideration of ☐ Additional Premium ☐ Return Premium } of $ ..... for days
in of $

It is hereby Understood and Agreed that:

Policy Renewal

This policy is subject to automatic notice of cancellation to take effect upon anniversary date (s).

provisions of the following pages, if any, are a part of this endorsement. All other terms and conditions of policy remain unchanged.

Westminster Insurance Managers, Inc.

For the Company

End. No. 2 Page 2

6-65

INVITATION TO BID AND SEALED PROPOSAL

Address Proposals To:
DEKALB COUNTY
DEPARTMENT OF PURCHASING
ROOM 406A DEKALB COUNTY COURTHOUSE, DECATUR, GEORGIA 30031

INVITATION NO. 148-72
DATE ISSUED June 20, 1972
Publication Date June 22, 19 72

For information contact J. P. Wade, Purchasing Agent — 371-2611 Bids must be submitted in original only.

Sealed proposals for furnishing the supplies or services described in the following schedule will be received in the bid opening Room 406A DeKalb County Courthouse, Decatur, Georgia 30031 until 3:00 P. M. on July 13, 19 72 and at that time publicly opened. All proposals are subject to the following:

1. The Schedule included below and/or attached hereto.
2. Such other provisions, representations, certifications, and specifications as are attached hereto or incorporated by reference in the Schedule.
3. Specifications
4. Notice to Bidders (Purchasing Form #17)

DELIVERY F. O. B.:

SCHEDULE

ITEM NO.	SUPPLIES OR SERVICES	(Number of Units)	UNIT	UNIT PRICE	AMOUNT
	The Board of Commissioners of DeKalb County will accept bids for liability insurance on DeKalb-Peachtree Airport located at Chamblee, Georgia. Information for making proposal can be secured from the Director of Finance, Room 903, DeKalb County Courthouse, Decatur, Georgia. Telephone 371-2741. Proposals should be submitted to: Department of Purchasing (Insurance), Room 406A, DeKalb County Courthouse, Decatur, Georgia, until 3:00 P.M. on July 13, 1972. Page 1 (Continued on Page 2)				

CAUTION: READ ALL INSTRUCTIONS, CONDITIONS, SPECIFICATIONS, ETC IN DETAIL.

In compliance with the above, the undersigned offers and agrees, if this Bid be accepted within sixty calendar days from the date of opening, to furnish any or all of the items upon which prices are quoted, at the price set opposite each item, delivered at the designated point (s) within the time specified in the Schedule.

Bidder will indicate time payment discount.

NAME AND ADDRESS OF BIDDER (Street, City, State and Zip Code. Type or print)	SIGNATURE OF PERSON AUTHORIZED TO SIGN BID	DATE OF BID
	SIGNER'S NAME AND TITLE (Type or Print)	
AREA CODE AND TELEPHONE NO.		

Purchasing Form #17

NOTICE TO BIDDERS

THIS IS TO BE SIGNED AND RETURNED WITH YOUR BID.

The enclosed (or attached) bid in response to Invitation No. 148-72 is a firm offer, as defined by Section 109A-2-205 of the Code of Georgia (Georgia Laws 1962 pages 156-178), by the undersigned bidder. This offer shall remain open for acceptance for a period of 60 days from the date of the opening of the bids, as set out in the invitation for bids. The terms, conditions, and other limitations of the invitation for bids are accepted.

NAME AND ADDRESS OF BIDDER (Street, City, State & Zip Code. Type or print)	SIGNATURE OF PERSON AUTHORIZED TO SIGN BID	DATE SIGNED
	SIGNER'S NAME AND TITLE (Type or print)	
AREA CODE AND TELEPHONE NO.		

Invitation No. 148-72

ITEM NO. PREMIUM

1. State amount to be charged for Coverage A - Bodily Injury excluding passengers $100,000.00 each person, $1,000,000.00 each accident, in accordance with attached Specifications. $_____

2. State amount to be charged for Coverage B - Property Damage, $1,000,000.00 each accident, in accordance with attached Specifications. $_____

Total Premium $_____

I. Bidder must check applicable blank below:

Bidder affirms he meets exactly specifications:

Yes_____ No_____

II. ANY DEVIATION FROM SPECIFICATIONS MUST BE COMPLETELY EXPLAINED BY BIDDER.

Bidder will explain exact particulars where his bid does not meet exactly the specifications if "No" is checked above.

_____

_____

III. Bidder will state below the claim facilities available to the County.

_____

_____

_____

Invitation No. 148-72

IV. Bidder will state below the address of the Claims Office to which claim reports are to be directed.

_____

_____

_____

V. Bidder will state name of company below:

_____

VI. Bidder will state below name of Agent and License Number.

_____

VII. The bidder is required to examine carefully the specifications and to investigate all hazards or potential risks to be covered. Any and all statements or declarations made by the County in writing or otherwise shall not be considered expressed or implie but are merely afforded for the information of the insurance company and should be verified by the company.

VIII. NOTE: PLEASE BID ON THIS FORM ONLY.

IX. The County reserves the right to accept, or reject or require modifications to any proposal submitted, and to readvertise.

[187]

Invitation No. 148-72

SPECIFICATIONS

DeKalb County does not own or operate any aircraft. DeKalb County does not handle any operational, repairing, ground or flight testing or refueling of aircraft.

Policy to contain rider "Waiver of Governmental Immunity"as follows: "It is agreed that the company waives any right to deny liability under the policy or to refuse payment within the limits thereof by reason of the non-liability of the insured political subdivision for the wrongful or negligent acts of" its agents and employees and its immunity from suit as an agency of the State performing governmental functions."

No claims during past nine years.

Period of coverage will be three years commencing August 6, 1972.

Only proposal by companies with rating of A and AAA or better and licensed to do business in the State of Georgia and represented by licensed agents will be considered.

[198]

NOTE: Portion of Record Omitted
Filed in its Original Form

(Caption omitted in printing)

[197] Filed: May 6, 1974

MOTION TO DISMISS THE AMENDED COMPLAINT

Now comes DEKALB COUNTY, GEORGIA, and the Chairman and Members of the Board of Commissioners of Roads and Revenues of DeKalb County, some of the Defendants in the above-styled action, and move the Court, pursuant to Rule 12, Federal Rules of Civil Procedure, for the dismissal of the amended Complaint, showing the Court as follows:

1.

The amended Complaint fails to state a claim or cause of action against DeKalb County, Georgia, upon which relief can be granted, for the reasons enumerated in the original Motion to Dismiss filed on behalf of these Defendants.

2.

More particularly, DeKalb County, Georgia, shows the Court that Count Four of the amended Complaint fails to state a claim or cause of action upon which relief can be granted in the following respects:

[198]

(a) The Constitution of the State of Georgia does not grant in Plaintiff the right of recovery from these Defendants for damage to personal property;

(b) The Plaintiff has no standing to assert the constitutional rights and privileges of another.

WHEREFORE, Defendants DEKALB COUNTY, GEORGIA, and the Chairman and Members of the Board of Commissioners of Roads and Revenues of DeKalb County, pray that their Motion be inquired into and sustained and that the amended Complaint be dismissed as to them.

(Signature omitted in printing)

(Caption omitted in printing)

[200] Filed: May 6, 1974

MOTION TO STRIKE THE AMENDED COMPLAINT

Now comes DEKALB COUNTY, GEORGIA, and the Chairman and Members of the Board of Commissioners of Roads and Revenues of DeKalb County, some of the Defendants in the above-styled action, and move the Court, pursuant to Rule 12, Federal Rules of Civil Procedure, to strike certain allegations from the Complaint, showing the Court as follows:

1.

These Defendants move to strike Paragraphs 65 (b) and 65 (A) of Count One of the Complaint and amended Complaint on the ground that said Paragraphs fail to state a claim upon which relief can be granted in that in Georgia, no direct action lies against the insurer of one of the Defendants and evidence of such is inadmissible and prejudicial.

2.

These Defendants move to strike Paragraph 5 of Count Four of the Complaint and amended Complaint on the ground that said Paragraph [201] fails to state a claim upon which relief can be granted in that Article I, Section 3, Paragraph 1 of the 1945 Constitution of the State of Georgia (Georgia Code Annotated Section 2-301) does not grant in Plaintiff the right of recovery from these Defendants for damage to personal property and that Plaintiff has no standing to assert the constitutional rights and privileges of another.

WHEREFORE, Defendants DEKALB COUNTY, GEORGIA, and the Chairman and Members of the Board of Commissioners of Roads and Revenues of DeKalb County, pray that their Motion be inquired into and sustained.

(Signature omitted in printing)

PAGE D
APPENDIX
IN
NO. 76-722

WILLIAM MICHAEL FIELDS,
Petitioner,

v.

DEKALB COUNTY, GEORGIA, *et al.*,
Respondents.

PLAINTIFFS | DEFENDANTS

[illegible] FILED

U.S. [illegible]

9/25/[illegible]

10/21/74 [illegible]

ATTORNEYS

Robert H. Pretzel
Robert H. Tweed
Powell, Goldstein, Frazer & Murphy
1100 C&S National Bank Building
Atlanta, Georgia 30303

Herbert S. Falk, Jr.
Falk, Carruthers & Roth
P. O. Box 510
Greensboro, N. C. 27402

Joe C. Freeman, Jr.
~~Neely, Freeman & Hawkins~~
Fulton Federal Bldg.
Atlanta, Georgia 30303
524-0856

For deft U.S.A.:
John [illegible]
William Willard, Asst. [illegible]
and
George M. Fleming
Trial Attorney
Torts Section, Civil Division
Department of Justice
Washington, D.C. 20530 (202/72[illegible]

CAUSE 28 USC §1332 & 1346(b)-Breach of contract

UNITED STATES OF AMERICA
Deft. & 3rd party plff.
-vs-
MACHINERY BUYERS CORP. and
SOUTHEAST MACHINERY, INC.

Wendell K. Willard
Harvey, Willard & Elliott
125 Trinity Place
Decatur, Ga.
Meade Burns
F: Clay Bush
Long, Weinberg, Ansley & Wheeler
3000 Equitable Bldg.
Atlanta, Ga. 525-5903
for all defts. except U.S.A.
Smith, Cohen, Pingel, Kohler, Martin
J. Arthur Mozley
2400 First National Bank Tower
Atlanta, Georgia 30303 658-1200
(Machinery Buyers Corp. & Southeast Machinery, Inc.)

[illegible] fee $15.00
Marshal $65.82
" $6.00 4/23/74 ajb
" $5.16 5/22/74

FILING FEES PAID			JURY DEMAND
DATE	RECEIPT NUMBER	C.D. NUMBER	DEFT. USA [illegible]
FEB 20 1974	[illegible]	[illegible]	PLAIN. [illegible]
OCT - 4 1974	[illegible]	[illegible]	DATE [illegible]
			STATISTICAL CARD
			CARD DATE MAIL
			JS5 [illegible]
			JS6

CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS

U.S. DISTRICT COURT DOCKET

BEST COPY AVAILABLE

DATE 1974	PROCEEDINGS
Feb. 20	Complaint with attachments and NOV cover sheet.
	Summons issued & delivered to U. S. Marshal.
25	ORDER APPOINTING Harry Gentry as agent of this Court to serve process in th action on deft. Commissioners of Roads & Revenues of Dekalb County, filed. C. furn.
27	Affidavit of Harry Gentry of service on deft. Commissioners of Roads & Revenues of Dekalb County by service on certain parties on 2-25-74, filed.
March 7	Marshal's return of service as to: John W. Stokes and William A. Williams executed on 2/21/74, as to Horace A. Ward, AC Guhl and Thomas Callaway executed on 2/22/74, as to Robert J. Morris executed on 2/23/74, as to American Home Assurance Company executed on 3/5/74 and as to H.F. Manget, Jr., executed on 3/6/74; service as to William M. Cooledge and Hoke Clayton Smith picked up by agent H.C. Gentry, of Powell & Goldstein on 2/25/74, filed.
12	Consent Order ext. time thru April 9 deft. to file pleadings, including answer, counterclaims or any cross claims, filed. cc; counsel
13	Deft. U.S.' Motion to consolidate with brief in support and proposed order, filed.
19	Consent order extending time thru March 28, 1974 for pltf. to defts. motion to consolidate, filed.
25	Consent order extending time thru April 9 for deft. to file any and all defensive pleadings et al, filed. copies furn.
28	Pltf's brief in opposition to motion of Deft. U.S. to consolidate, filed.
APRIL 2	First interrogs propounded by the deft USA, to pltf., filed
6	SUBMITTED ON DEFT U.S.' MOTION TO CONSOLIDATE & ORDER OF 3/19/74
9	Consent Order by Clerk extending time thru 4-15-74 for defts. Dekalb Co., Ga., H. F. Manget, Jr. & American Home Assurance Co. to answer, etc., filed. C. furn. WCO
12	ANSWER and CROSS-CLAIMS of deft U.S.A., filed. To WCO.
	Deft U.S.A.'s first request to produce & permit inspection & copying addressed to pltf, filed. To WCO.
	3rd PARTY COMPLAINT, filed. To WCO
	Summons issued & delivered to U.S. Marshal on 3rd party complaint
15	Dekalb County, A. C. Guhl, William A. Williams, T. M. Callaway, Jr., Hoke Clayton Smith, Robert J. Morris, Horis A. Ward and W. M. Coolidge motion to dismiss, filed. WCO
	Dekalb county, A. C. Guhl, T. M. Callaway, Jr., Hoke C. Smith Robert J. Morris, Horis A. Ward and W. M. Coolidge's motion to dismiss, filed. WCO
	Breif in support of above motions to dismiss and to strike, filed.
	Motion of American Home Assurance Co. to strike and dismiss with brief, filed. WCO
	ANSWER & JURY DEMAND OF H. F. Manget, filed. WCO
	ANSWER & JURY DEMANDOOF Dekalb County, Ga. and the Chairman and members of the Board of Commissioners of Roads and Revenues of Dekalb county, filed. WCO
	ANSWER & JURY DEMAND OF American Home Assurance Company, filed. WCO
16	Amendment to ANSWER of American Home Assurance Company, filed WCO
23	Marshal's return of service as to Machinery Buyers Corp. and Southeast Machinery, Inc. both executed on 4/18/74, filed.

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT
WILLIAM MICHAEL FIELDS	C.O.R., Dekalb County, Ga., A.C. Guhl, William A. Williams, Thomas Callaway, Hoke Clayton Smith, et al

DATE 1974	PROCEEDINGS
Apr. 25	Consent Order by Clerk extending time thru 5-6-74 for pltf. to respond to deft. American Home Assurance Co's motion to strike & motion to dismiss, filed. C. furn. WCO
	Consent Order by Clerk extending time thru 5-6-74 for pltf. to respond to defts. Dekalb Co., A.C. Guhl, William A. Williams, T.M. Callaway, Jr., Hoke Clayton Smith, Robert J. Morris, Horis A. Ward, & W. M. Coolidge's motion to dismiss & motion to Stike, filed. C. furn. WCO
24	ANSWER of Machinery Buyers Corp. & Southeast Machinery, Inc. to 3rd party Complaint of U.S.A, filed. WCO
	JURY DEMAND by Machinery Buyers Corp. & Southeast Machinery, Inc.. filed. WCO
29	ANSWER TO CROSS-CLAIM of U.S.A., with JURY DEMAND, filed. WCO
30	Consent Order by Clerk extending time thru 5-20-74 for pltf. to respond to deft. USA's 1st interrogs., filed. C. furn. WCO
May 3	3rd party summons issued & delivered to U.S. Marshal.
6	Consent Order by Clerk ext. time thru 5-17-74 for pltf to respond to defts Dekalb Count, A. C. Guhl, William A. Williams, T. M. Callaway, Hoke Smith, Robert Morris, Horis Ward and WM Coolidge's motion to dismiss and to strike, filed. (copies furn)
	Consent Order by Clerk ext. time thru 5-17-74 for pltf to respond to deft American Home Assurance Co.'s motion to strike and dismiss, filed. (copy to counsel)
9	Marshal's return of service as to third party comp. executed as to Machinery Buyers Corp. executed on 5-8-74, filed.
15	ADDITIONAL ANSWER of Machinery Buyers Corp. & Southeast Machinery Inc., to 3rd pty complaint, filed.
16	Consent Order ext. time thru 5/27/74, for pltf to answer, etc., to deft USA's 1st request to produce and permit inspection and copying, filed. (Copy Counsel 5/16)
17	Consent Order by Clerk ext. time thru 5-24-74 for pltf to respond to defts' Dekalb County, Guhl, Williams, Callaway, Smith, Morris, Ward & Coolidge's motion to strike and motion to dismiss, filed. (CF)
	Consent Order by Clerk ext. time thru 5-24-74 for pltf to respond to deft American Home Assurance Co.'s motion to strike and motion to dismiss, filed. (CF)
	Consent Order by Clerk ext. time thru 5-28-74 for pltf to respond to USA's first interrogs., filed. (CF) To WCO
22	Marshal's return of service as to Stanley E. Galkin for Southeast Machinery, Inc. executed 5/20/74, on Third Pty Complaint, filed.
24	Pltf's brief in opposition to Dekalb County and County Commissioners' motion to dismiss and motion to strike, filed. To WCO
	Consent Order by Clerk ext. time thru 5-29-74 for pltf to respond to deft American Home Assurance Co.'s motion to strike and motion to dismiss, filed. (copy to counsel) To WCO
28	SUBMITTED ON DEFTS' DEKALB COUNTY, GUHL, WILLIAMS, CALLAWAY, SMITH, MORRIS, WARD & COOLIDGE'S MOTION TO STRIKE AND MOTION TO DISMISS.
	Consent Order with approval of Clerk extending time thru 6-4-74 for pltf. to respond to deft. USA's 1st request to produce & permit inspection & copying, filed. C. furn. WCO
	Consent Order with approval of Clerk extending time thru 6-4-74 for pltf. to respond to deft. USA's 1st interrogs., filed.
	Pltf's brief in opposition to the motion of American Home Assurance Co. to strike & dismiss, filed. WCO

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET PAGE

DATE 1974	PROCEEDINGS
May 30	SUBMITTED ON AMERICAN HOME ASSURANCE COMPANY'S MOTION TO STRIKE AND DISMISS.
31	Second additional ANSWER of Machinery Buyers Corp & Southeast Machinery,Inc. to third party complaint of U. S. of America, filed. To WCO.
June 5	Pltf's ANSWERS to deft, U. S. of America's first interrogs, filed. To WCO. Response of pltf to deft, U. S. of America's first request to produce and permit inspection and copying addressed to pltf., filed. To WCO.
13	Proposed order to extend time for deft. to have until 6/26/74 to respond to plfts' brief in opposition to deft's Motions to strike and dismiss, rec'd. To WCO
19	Consent Order ext. time thru 6/26/74, for defts Dekalb County, the Chairman & Commissioners of Roads & Revenues of Dekalb Cty and American Home Assurance Co., to file any response to pltf's brief in opposition to defts' motions to strike & dismiss, filed. (Copy Counsel 6/19) WCO
20	Deft Dekalb County, Guhl, Williams, Callaway, Jr., Smith, Morris, Ward & Coolidge's supplemental brief in support of motion to dismiss and to strike, filed. WCO
21	American Home Assurance Co's supplemental brief in support of its motion to strike and dismiss, filed. WCO
24 27	ORDER filed - GRANTING U S's motion to consolidate case with C. A. 19293, for discovery purposes but deferring ruling on consolidation for trial purposes until the pretrial hearing; DENYING DeKalb Co's motion to strike portions of pltf's complaint; GRANTING DeKalb Co's motion to dismiss pltf's complaint as to its claims of negligence, nuisance & for breach of contract; and GRANTING American Home Assurance Co's motion to dismiss. (copy to counsel, 6/28) Cross-Claims of U S against DeKalb Co & American Home Assurance remain.
July 3	Motion of Southeast Machinery, Inc., Machinery Buyers Corp. and Fireman's Fund Insurance Company to vacate, set aside, alter and amend the orders entered on June 27, 1974 and for reconsideration rehearing and new trial with memo in support, filed.
15	Response to pltf's 2nd request for admission addressed to deft. USA, filed.
29	SUBMITTED ON DEFTS' SOUTHEAST MACHINERY, INC., MACHINERY BUYERS CORP., AND FIREMAN'S FUND INSURANCE CO'S MOTION TO VACATE, SET ASIDE, ALTER AND AMEND THE ORDERS ENTERED 6/27/74 & FOR RECONSIDERATION, REHEARING & NEW TRIAL.
31	Deft USA's request to produce and permit inspection and copying filed. (In 19293) ~~Orig-&-Dup-Req~~ WCO Deft USA's 3rd interrogs. to pltfs' Miree, filed. (In 19293) ~~Orig & Dup Req~~ WCO
Aug. 1	Southeast Machinery, Inc., Machinery Buyers Corp. & Fireman's Fund Insurance Co's notice to take depositions, filed. WCO WCO
2	Defts' Supplemental Notice to Take Depositions w/exhibit A/filed.
5	Deft. U.S.A. answers to Miree pltfs' 2nd. interrogs., filed. WCO
19	Deft USA'S memorandum in support of the motion of Southeast Machinery, Inc., Machinery Buyers Corp., & Fireman's Fund Ins. Co. to vacate, set aside, alter and amend the orders of 6/27/74 and for reconsideration, rehearing and new trial, filed. WCO
20	Response of Machinery Buyers Corp., Southeast Machinery, Inc., Fireman's Fund Insurance Co. to the request to produce and permit inspection and copying of the USA, filed. ~~(Orig-&-Dup-Req)~~ WCO

cont'd on Sheet 3

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET PAGE
[illegible]	U.S.A. [illegible]	[illegible]

DATE	PROCEEDINGS
[illegible].27	United States' ANSWERS to the Miree pltfs' 3rd interrog.,filed To WCO
[illegible]	pl. & [illegible] request for production of documents, filed. WCO
10	Deposition of HENRY F. MINGET, JR., filed. (In 19293)
16	Deft, U. S. A.'s motion for Partial Summary Judgment w/memorandum and exhibits, filed.
18	Pltf's response to deft, United States of America's Request for Production of Documents w/attachments, filed. (Copies requested)
21	FINAL JUDGMENT filed & entered dismissing action as to deft American Home Assurance Co., & that pltf take nothing; that taxation of costs in this action shall await entry of final judgment as to all defts. (Copy Counsel 10/23)
25	Proposed Extension and ORDER ext. time thru 12/2/74, for pltf to respond to USA's motion for partial summary judgment, filed. (Copy Counsel 10/30)
29	Letter dated 10/25/74 of Joe C. Freeman, Jr., Rec'd
Nov.1	Deft' U.S.A.'s Interrogs to defts Machinery Buyers Corp and Southeast Machinery, Inc, filed.
11	Letter from pltf's counsel requesting record be sent on appeal, filed.
12	Joint Designation of record on appeal & stipulation of parties that parts of the record on appeal be retained in the District Court, filed.
12	ORDER to forward copies on appeal in lieu of orignals, filed. c. counsel.

ATTEST: A TRUE COPY
CERTIFIED THIS
11-13-74
Ben H. Carter, Clerk

By: [signature]
Deputy Clerk

[6]

[6] [Filed in Clerk's Office Feb. 20, 1974
Ben H. Carter, Clerk; By: P.J.E., Deputy Clerk.]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WILLIAM MICHAEL FIELDS,

Plaintiff,

v.

UNITED STATES OF AMERICA;
DEKALB COUNTY, GEORGIA:
A. C. GUHL, in his capacity as Chairman of the Board of Commissioners of Roads and Revenues of DeKalb County;
WILLIAM A. WILLIAMS, in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
T. M. CALLAWAY, JR., in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
HOKE CLAYTON SMITH, in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
ROBERT J. MORRIS, in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
HORIS A. WARD, in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
W. M. COOLIDGE, in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County; and

CIVIL ACTION NO. C74-291A

[7]

H. F. MANGET, JR., individually and as Airport Manager of the DeKalb-Peachtree Airport; and
AMERICAN HOME ASSURANCE COMPANY,

Defendants.

CIVIL ACTION NO. C74-291A

COMPLAINT
COUNT ONE

[7] 1.

Plaintiff William Michael Fields is a citizen of the State of North Carolina.

2.

(a) Defendant United States of America is subject to the jurisdiction of this Court and may be served with the complaint and summons as provided by law.

(b) Defendant DeKalb County, Georgia, is a political subdivision of the State of Georgia with its fiscal affairs committed to a Board of Commissioners of Roads and Revenues and is located within this judicial district, and is therefore subject to the jurisdiction of this Court. It may be served with the complaint and summons as provided by law.

(c) Defendant A. C. Guhl is sued in his capacity as Chairman of the Board of Commissioners of Roads and Revenues of DeKalb County. Said defendant is a citizen of Georgia and resides within this District, and said defendant is subject to the jurisdiction of this Court and may be served with the complaint and summons as provided by law.

(d) Defendant William A. Williams is sued in his capacity as a Member of the Board of Commissioners of

[7]

Roads and Revenues of DeKalb County, Georgia. Said defendant is a citizen of Georgia and resides within this District, and said defendant is subject to the jurisdiction of this Court and may be served with the complaint and summons as provided by law.

(e) Defendant T. M. Callaway, Jr. is sued in his capacity as a Member of the Board of Commissioners of Roads and Revenues of DeKalb County, Georgia. Said defendant is a citizen of Georgia and resides in this District, and said defendant is subject to the jurisdiction of this Court and may be served with the complaint and summons as provided by law.

[8]

(f) Defendant Hoke Clayton Smith is sued in his capacity as a Member of the Board of Commissioners of Roads and Revenues of DeKalb County, Georgia. Said defendant is a citizen of Georgia and resides in this District, and said defendant is subject to the jurisdiction of this Court and may be served with the complaint and summons as provided by law.

(g) Defendant Robert J. Morris is sued in his capacity as a Member of the Board of Commissioners of Roads and Revenues of DeKalb County, Georgia. Said defendant is a citizen of Georgia and resides in this District, and said defendant is subject to the jurisdiction of this Court and may be served with the complaint and summons as provided by law.

(h) Defendant Horis A. Ward is sued in his capacity as a Member of the Board of Commissioners of Roads and Revenues of DeKalb County, Georgia. Said defendant is a citizen of Georgia and resides in this District, and said

[9]

defendant is subject to the jurisdiction of this Court and may be served with the complaint and summons as provided by law.

(i) Defendant W. M. Coolidge is sued in his capacity as a Member of the Board of Commissioners of Roads and Revenues of DeKalb County, Georgia. Said defendant is a citizen of Georgia and resides in this District, and said defendant is subject to the jurisdiction of this Court and may be served with the complaint and summons as provided by law.

(j) Defendant H. F. Manget, Jr. is sued individually and in his capacity as DeKalb County's Airport Manager of the DeKalb-Peachtree Airport. Said defendant is a citizen of Georgia and resides in this District, and said defendant is subject to the jurisdiction of this Court and may be served with the complaint and summons as provided by law.

(k) American Home Assurance Company is a New York Corporation, with its principal office in that state and with an office and place of business in Fulton County, Georgia; service may be had by serving its agent for service, Roy Overstreet, at 1819 Peachtree Street, Suite 610, Atlanta, Fulton County, Georgia.

[9]

At the time of the injuries herein complained of, Defendant American Home Assurance Company issued a policy of liability insurance to defendant DeKalb County, Georgia, insuring said DeKalb County, Georgia, against liability for bodily injury or death with limits of $100,000.00 for each person and $1,000,000.00 for each accident, and containing the following waiver of Governmental Immunity:

> "It is agreed that the company waives any right to deny liability under the policy or to refuse payment within the limits thereof by reason of the non-liability of the insured political subdivision for the wrongful or negligent acts of its agents and employees and its immunity from suit as an agency of the State performing governmental function."

Said defendant American Home Assurance Company and defendant DeKalb County, Georgia, are liable to plaintiff herein by reason of the provisions of said policy and by reason of the facts herein set forth. A copy of said insurance policy is attached hereto, marked Exhibit "A", and made a part hereof by reference.

3.

(a) With respect to defendant United States of America, this action is brought pursuant to the Federal Tort Claims Act, 28 U.S.C. §1346(b). More than six months prior hereto, plaintiff submitted an appropriate written administrative claim to defendant United States of America with respect to the damages sought in this action. On December 26, 1973, the Chief Counsel for and on behalf of the Federal Aviation Administration, an agency of the United States of America, made a final disposition of the claims of the plaintiff William Michael Fields by letter denying said claims, a copy of which is attached as Exhibit "B" to the Complaint. Plaintiff therefore has exhausted its administrative remedies in accordance with 28 U.S.C. §2675, and this action is brought within the period of time specified in 28 U.S.C. §2401(b). Jurisdiction of this action in this Court against defendant United States of America [10] is properly founded upon the Federal Tort Claims Act and other applicable laws.

(b) With respect to the remaining defendants, there is complete diversity of citizenship and the value of the matter in controversy, exclusive of interest and costs, exceeds the sum of $10,000.00. Jurisdiction of this action in this Court with respect to the remaining defendants is therefore properly founded upon 28 U.S.C. §1332 and §1391.

(c) With respect to all defendants, all conditions precedent to the filing of this action have been performed or have occurred.

4.

Hereinafter defendant United States of America will sometimes be referred to as "defendant F.A.A." and/or as "defendant U.S.A." and DeKalb County and the Board of Commissioners of Roads and Revenues and H. F. Manget, Jr., individually and as Airport Manager of the DeKalb-Peachtree Airport will sometimes be referred to as the "County defendants."

5.

On February 26, 1973, at approximately 10:12 a.m., E.S.T., a Learjet Model 24 Aircraft, N-454RN, was in the process of taking off from Runway 20L at DeKalb-Peachtree Airport. Immediately after becoming airborne, and while within the boundaries of the airport, the turbine or jet engines of said aircraft ingested a large number of birds, causing a sudden power loss in both engines, and the crash and total destruction of said aircraft, and the death of all seven persons aboard the aircraft, and the injuries to the plaintiff and the damages to his property as herein described.

[10]

6.

On the above date at approximately 10:15 a.m., E.S.T., Plaintiff William Michael Fields was entering his automobile which was parked in an apartment complex, said complex being in close proximity to DeKalb-Peachtree Airport.

[11]

7.

At the above mentioned time and place the disabled aircraft in question passed overhead spewing burning fuel and as a result the plaintiff and his property were engulfed by burning fuel and flames.

8.

Said aircraft then crashed a short distance from the plaintiff killing all persons aboard.

9.

Because of said injuries as will be more fully shown hereafter, the plaintiff has received reasonable and necessary medical services valued in excess of $35,000.00 and will require extensive future medical treatment.

10.

The plaintiff's automobile immediately prior to the crash was valued at $5,500.00 and was completely destroyed.

11.

The plaintiff's personal belongings and business supplies immediately prior to the crash were valued at $4,687.00 and were completely destroyed as a result of actions and inactions of the defendants.

[12]

12.

At the time of said crash, the plaintiff was employed as an independent contractor and salesman with Alfred Shaheen, Ltd., and because of said injuries complained of herein, he has been prevented from pursuing his employment; he incurred large medical expenditures; and he sustained loss of earnings, pain and suffering and permanent disfigurement as more particularly described herein.

13.

Plaintiff William Michael Fields brings this action against each defendant jointly and severally for past, present and future medical expenses; past, present and future lost wages; impairment of earning capacity; property damage; permanent disability; serious and permanent disfigurement and pain and suffering.

[12]

14.

The aircraft in question was a Learjet, Model 24, twin engine turbine-powered jet airplane manufactured by Gates Learjet Corporation, and the engines of said airplane were Model CJ-610-4 turbine-powered jet engines manufactured by General Electric Company.

15.

Shortly prior to the takeoff of the airplane, one of the members of the flight crew of the airplane had filed an IFR (Instrument Flight Rules) flight plan with and had received a weather briefing from the Atlanta Flight Service Station with respect to the proposed flight of the airplane from DeKalb-Peachtree Airport to a destination in Florida.

16.

The Atlanta Flight Service Station is a facility operated, supervised and manned by defendant U.S.A., for the purposes, among other things, of recording and filing flight plans and furnishing pilots with relevant data and information concerning weather, flight conditions and various other matters concerning safety of flight. At and prior to the time of the flight in question, defendant U.S.A., (including personnel of the Atlanta Flight Service Station) had actual knowledge that a bird hazard, bird problem and bird-attracting open garbage dump existed at DeKalb-Peachtree Airport.

17.

Prior to the beginning of the flight in question, and in accordance with Federal Aviation Regulations, the flight crew of the airplane had contacted both the ground control and tower control facilities of defendant F.A.A. at the Airport and had advised defendant F.A.A. of the proposed I.F.R. flight from DeKalb-Peachtree Airport. In response to such communications from the flight crew, the defendant F.A.A. through its ground control and tower control facilities instructed and directed the flight crew to taxi the Learjet to Runway 20L. The flight crew received from defendant F.A.A. the I.F.R. clearance as filed, and the flight was cleared for takeoff from Runway 20L by the defendant F.A.A. at 10:10.40 a.m., E.S.T. At and prior to the time of takeoff, the personnel [13] of defendant F.A.A. who were operating said ground and tower control facilities knew or should have known that a bird hazard, bird problem and bird-attracting open garbage dump existed at the Airport.

18.

After the crash the remains of many dead starlings or cowbirds or similar birds were found at or near the departure end of Runway 20L, and bird remains and particles of protein matter were found on the airplane windshield and center post and in the airplane engines. Also, immediately prior to and after the crash large flocks of starlings, cowbirds or similar birds were located in and about the Airport boundaries and the adjacent garbage dump operated by the County defendants.

19.

Prior to the crash, both the defendant U.S.A. and the County defendants knew or should have known that birds could be ingested into turbine or jet engines, including Learjet engines, and that turbine or jet engine bird ingestion could cause a loss of engine power and an engine failure and a crash. Prior to the crash, the defendant F.A.A. and the County defendants knew or should have known that a dangerous bird hazard, bird problem and bird-attracting open garbage dump existed at the Airport.

20.

At and prior to takeoff of the airplane, however, the defendants herein knew or should have known that a bird hazard, bird problem and bird-attracting open garbage dump existed at the Airport, and that extremely large flocks of starlings and similar types of birds were located within or near the Airport boundaries and in dangerously close proximity to Runway 20L. The open garbage dump was visible to the air traffic control specialists employed by defendant F.A.A. and located in the air

[13]

traffic control tower maintained and operated by defendant F.A.A.

[14]

21.

The United States of America, through the Department of Transportation and the Administrator of the F.A.A., has been directed by Congress in the Federal Aviation Act of 1958, as amended, to assume responsibility as follows:

> "to develop plans for and formulate policy with respect to the use of the navigable airspace; and assign by rule, regulation, or order the use of the navigable airspace under such terms, conditions and limitations as he may deem necessary in order to insure the safety of aircraft and the efficient utilization of such airspace. He may modify or revoke such assignment when required in the public interest." 49 U.S.C. §1348(a).

22.

The United States of America, through the Department of Transportation and the Administrator of the F.A.A., is further authorized by Congress in said Act to assume responsibility as follows:

> "(1) to acquire, establish, and improve air-navigation facilities wherever necessary;
>
> (2) to operate and maintain such air-navigation facilities; . . .
>
> (4) to provide necessary facilities and personnel for the regulation and protection of air traffic." 49 U.S.C. §1348(b).

23.

The United States of America, through the Department of Transportation and the Administrator of the F.A.A.,

[15]

is further directed by Congress in said Act to assume responsibility as follows:

> "to prescribe air traffic rules and regulations governing the flight of aircraft, for the navigation, protection and identification of aircraft, for the protection of persons and property on the ground, and for the efficient utilization of the navigable airspace, including rules as to safe altitudes of flight and rules for the prevention of collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects." 49 U.S.C. §1348(c).

24.

The aforementioned directions to and placement of responsibility on the United States of America are pursuant to the Congressional determination found at 49 U.S.C. §1303 that the United States of America through the Administrator of the F.A.A. shall consider the following as being in the public interest:

[15]

> "(a) The regulation of air commerce in such manner as to best promote its development and safety and fulfill the requirements of national defense;
>
> (b) The promotion, encouragement, and development of civil aeronautics;
>
> (c) The control of the use of the navigable airspace of the United States and the regulation of both civil and military operations in such airspace in the interest of the safety and efficiency of both;
>
> (d) The consolidation of research and development with respect to air navigation facilities, as well as the installation and operation thereof;
>
> (e) The development and operation of a common

system of air traffic control and navigation for both military and civil aircraft."

25.

The United States of America, through the Department of Transportation and the Administrator of the F.A.A., is further given the duty by Congress in said Act as follows:

"to promote safety of flight of civil aircraft in air commerce by prescribing and revising from time to time: . . .

(6) Such reasonable rules and regulations, or minimum standards, governing other practices, methods, and procedure, as the Administrator may find necessary to provide adequately for . . . safety in air commerce." 49 U.S.C. §1421 (a) (6).

26.

Pursuant to the aforesaid authority and directions from Congress the United States of America administers air traffic control of civil air operations within United States airspace; operates F.A.A. air route traffic control centers, airport traffic control towers, flight service stations, and related communications equipment required for control of air traffic; and collects and disseminates information relative to civil aeronautics and safety of flight.

27.

Also pursuant to said Congressional authority and directions the United States of America has established as being necessary and operates air navigation facilities, including an Airport Traffic Control Tower (ATCT) at DeKalb-Peachtree Airport and a flight service station in Fulton County, Georgia, which flight service station

serves the geographical area in which DeKalb-Peachtree Airport is located.

[16] 28.

An ATCT is a central operations facility in the terminal air traffic control system, consisting of a tower cab structure, including an associated IFR room if radar equipped, using air/ground communications and/or radar, visual signaling and other devices, to provide safe and expeditious movement of air and ground traffic.

29.

The ATCT at DeKalb-Peachtree Airport is operated by the F.A.A. and is "responsible for the safe, orderly and expeditious flow of air traffic in the vicinity of an [the] Airport." 30 F.R. 3395, as amended; 16 F.R. 2975; 2979, revised 19 F.R. 2098, §24.

30.

Said ATCT is manned by personnel (employed by the United States of America) "who are responsible for the safe and orderly flow of air traffic in the vicinity of the Airport." Their principal duties are as follows:

(a) "To issue instructions to pilots for taxiing, take-off, approach for landing, and landing of aircraft.

(b) "To inform pilots regarding field and weather conditions, air navigational facilities, emergency landing areas, restructions to flight, regulations, and other matters which may be of assistance to the pilot.

(c) "To relay messages between pilots, airline operations offices, Air Route Traffic Control Centers,

Weather Bureau Offices, Communications Stations and other appropriate agencies concerning the operations, dispatch, and control of aircraft.

(d) "To invoke emergency procedures when any emergency occurs or appears likely to occur to aircraft under tower control.

(e) "When equipped with airport surveillance and precision approach radar, to monitor aircraft arriving and departing from an airport on instruments, and, in an emergency or upon request, issuing ground controlled approach instructions (GCA) for a let-down." 16 F.R. 2974, 2979, revised 19 F.R. 2098, §24.

31.

Pursuant to the authority and directions of Congress, the United States of America, through the Department of Transportation and the F.A.A., prior to the crash in question had issued Advisory Circular No. 150/5200-3A, dated March 2, [17] 1972, entitled "Bird Hazards to Aircraft," in which the United States of America through said agencies stated in part as follows:

"Migratory birds, particularly waterfowl, are a hazard to aircraft due to their size and weight. In recognition of this potential hazard, F.A.A. Air Traffic Control and Flight Service Station facilities issue advisory information on bird activities when they are reported or when they have knowledge of such activities. Information given to pilots includes the position, species or size of bird if known, and their course and altitude."

32.

The defendant F.A.A. in said Advisory Circular also admitted that the birds of greatest potential hazard to

aircraft because of size, abundance, or habit of flying in dense flocks, include starlings; that birds of these species are considered particularly hazardous during spring and fall migrations and when they are concentrated in wintering areas; and that at some airports there are large flocks of certain birds which could be a problem during certain seasons. DeKalb-Peachtree Airport is not named or referred to in said Advisory Circular.

33.

To cope with these admitted flight hazards, the Advisory Circular states that the United States of America, through the F.A.A., is operating as follows:

"F.A.A. Air Traffic Control and Flight Service Station facilities coordinate with airport management for either appropriate alerting action by a Notice to Airmen when flocks of birds are noted to remain in the airport vicinity or for possible closing by a Notice to Airmen when flocks roost on runways."

34.

The Federal Government personnel providing terminal air traffic control services at airports, including DeKalb-Peachtree Airport, were prior to injuries herein complained of required by the United States of America to be familiar with the provisions of the Terminal Air Traffic Control Manual, 7110.8, one of the air traffic control manuals referred to in Part 65 of the Federal Aviation Regulations, in which Manual are set forth the following duties and responsibilities of air traffic control personnel:

[18]

"If you observe or are informed of any condition which affects the safe use of a landing area:

(a) Relay the information to the airport manager concerned.

(b) Issue a Notice to Airmen publicizing an unsafe condition if you are unable to contact the airport manager (or if there is no airport manager designated) and then inform the manager as soon as practicable. . . ."

"122. BIRD ACTIVITY
ADDUL SVC

"a. Issue advisory information on the position and, if known, species or size of birds, and their course of flight and altitude if you believe that the safety of flight in that area may be affected. Do this for at least 15 minutes after receipt of such information from pilots or from adjacent facilities unless visual observation or subsequent reports reveal the activity is no longer a factor."

"1552. BIRD ACTIVITY INFORMATION

"a. Issue advisory information on pilot-reported or radar-observed and pilot-verified bird activity. Include position, species or size of birds, if known, course of flight and altitude. (E)

Phraseology:

FLOCK OF (Species, if known/size, if known) BIRDS, (number) O'CLOCK (number of miles) MILES (direction) BOUND:

LAST REPORTED AT (altitude, as determined from pilot report).

or

ALTITUDE UNKNOWN.

FLOCK OF (species, if known) / (size, if known) BIRDS (direction) BOUND ALONG (flyway or geographical route):

LAST REPORTED AT (altitude, as determined from pilot report).

or

ALTITUDE UNKNOWN.

FLOCK OF / NUMEROUS FLOCKS (species, if known) / (size, if known) BIRDS, VICINITY (location):

LAST REPORTED AT (altitude, as determined from pilot report).

or

ALTITUDE UNKNOWN.

b. Relay bird activity information to adjacent facilities and to FSS's whenever it appears it will become a factor in their areas."

35.

Despite the Advisory Circular and the provisions of the Terminal Air Traffic Control Manual, aforementioned, the Federal Government personnel providing terminal air traffic control services and flight service station facilities for DeKalb-Peachtree Airport negligently failed to issue a Notice [19] to Airmen prior to the crash of the aforesaid aircraft when said personnel knew or should have known of the bird hazard at DeKalb-Peachtree Airport.

36.

The County defendants negligently failed to coordinate with the above-mentioned personnel for either appropriate alerting action by Notice to Airmen when said County defendants knew or should have known that flocks of birds remained in the airport vicinity or for possible closing by a Notice to Airmen when said County defendants

knew or should have known that flocks of birds roosted on the runways.

37.

The United States of America, through its said agencies and their predecessors, have known about bird hazards to aircraft at least since the 1940's, when the F.A.A. published a report of the collection and compilation of detailed statistics on the collision of aircraft with birds, which report was admitted into evidence in *Rapp v. Eastern Air Lines, Inc., U.S.A., et al.*, 264 F.Supp. 673 (E.D. Pa. 1967), and which report showed 1946 statistics on bird strikes by aircraft, including there being more than one such collision per day during this early aviation period.

38.

DeKalb-Peachtree Airport is located within the boundaries of DeKalb County on land owned by the County, and said Airport is owned, operated and managed and maintained by the County defendants. Said Airport has paved runways and airport hangars, servicing and parking facilities, a control tower with radio facilities, an instrument landing system control center, and access to other radio and navigational aids. The Airport is operated by the County defendants for the public welfare and benefit of the citizens of the United States of America, including plaintiff, and is operated under the jurisdiction of the Federal Aviation Administration.

39.

DeKalb County, Georgia acquired the DeKalb-Peachtree Airport by way of quit-claim deed from the General Services [20] Administration of the United States of

America on or about February 15, 1960. The County's personnel operated the control tower at the DeKalb-Peachtree Airport from March, 1959, until January, 1963, when they were replaced by Federal Aviation Administration Air Traffic personnel. On February 26, 1973, the date of the injuries complained of herein, the air traffic contro tower was operated by Federal Aviation Administration Air Traffic Control personnel.

40.

Beginning in 1962, a portion of the land constituting the Airport site was used by DeKalb County as a garbage dump. In 1964 the dump was closed and remained closed until March, 1966, when it was reopened. Since that time DeKalb County has utilized a portion of or land adjoining the Airport site for dumping garbage.

41.

Prior to injuries herein complained of, employees of DeKalb County at the Airport observed and reported a significant increase in the number of birds on or in the vicinity of the Airport following the utilization of the Airport site for garbage disposal.

42.

On and prior to February 26, 1973, DeKalb County had been using the Airport site as an open garbage dump where large quantities of raw garbage, refuse, offal, filth, waste and trash by the truck loads were dumped and deposited upon the Airport site numerous times during each day by personnel and vehicles controlled by said DeKalb County through its Sanitation Department and

under the ultimate direction and control of the County defendants.

43.

The said untreated raw garbage, refuse, trash, offal, filth and other waste material deposited by the County defendants as aforesaid created a large area constituting an attraction to birds and causing large flocks of birds to congregate about the Airport, the runways, ends of runways and other areas within the Airport boundaries. The [21] attractiveness of said open garbage dump to birds was increased by the failure of the County defendants to remove trees, undergrowth and high grass from the area of the open garbage dump and along the runways, which foliage provided roosting, nesting and basking areas for the large flocks of birds attracted to the garbage dump. Said birds at certain times remained, walked and ran upon said runways and adjacent grass areas at the sides and ends of the runways, and congregated in the numerous trees on and about the Airport area. Said birds when located upon the Airport grounds often flew aloft in large flocks many times each day as aircraft would take off, approach, land or fly near said Airport, and said birds constituted a continuous hazard at said Airport to the safety of aircraft and to the safety and lives of the crews and passengers therein and to persons residing and located upon the ground in the vicinity of said Airport.

44.

All of the foregoing was known or should have been known by all defendants at and prior to the time of the crash involved in this lawsuit.

45.

At the time of injuries herein complained of, the United States of America, by and through the Department of Transportation, Federal Aviation Administration, has the responsibility for the administration of the Federal Airport and Airway Development Act of 1970 and its predecessor, the Federal Airport Act of 1946. Involved in the administration of the programs was the responsibility of enforcing the provisions of the various Grant Agreements issued in accordance with the provisions of these Acts. These Grant Agreements included provisions under which the airport owners maintain and operate airports in accordance with the standards set forth in these Agreements.

46.

At the time of injuries herein complained of, the United States of America has the responsibility for and [22] jurisdiction over the safety of DeKalb-Peachtree Airport to the extent that it was the duty of the United States of America, as a condition precedent to the granting of funds for Airport developments, to receive assurances from the owners of the Airport that airport hazards would be mitigated.

47.

Beginning in June, 1962, the Federal Government entered into six (6) Grant Agreements with DeKalb County, pursuant to which at least $1,025,224.06 was paid to the County for the purpose of assisting the County in the improvement and development of DeKalb-Peachtree Airport, including the construction of Runway 20L-2R which was begun in 1966 and completed in 1968.

48.

Associated with the various Grant Agreements is an airport layout plan developed by DeKalb County and approved by the Federal Aviation Administration which graphically illustrates the development and proposed development of the airport facilities and the use of the land included within the airport boundaries at all times pertinent hereto. Such use did not include an open garbage dump or any other dumping ground for garbage.

49.

Prior to the crash in question, the United States of America, through the Federal Aviation Administration, recognized that the existence of the open garbage dump constituted an attraction to birds of various species, and that birds constituted a definite hazard for aircraft taking off and landing at the Airport.

50.

From March 9, 1970, through February 14, 1972, the Federal Aviation Administration communicated with officials of DeKalb County, both by letter and by conference, relative to alleviation of the bird hazard caused by the existence of the open garbage dump on the airport site. In February, 1971, the F.A.A. was advised by DeKalb County that the dump would be closed by August, 1972, but DeKalb County failed to keep its word in this regard.

[23] 51.

On the 27th day of June, 1967, the Federal Aviation Administration and the United States of America entered into one of a series of similar Agreements with DeKalb

County by and through the Chairman of the Board of Commissioners of Roads and Revenues.

52.

Said Agreements as related to aforesaid Airport in pertinent part provided as follows:

> "The Sponsor [DeKalb County] will keep up to date at all times an airport layout plan . . . Such airport layout plan, and each amendment, revision, or modification thereof, shall be subject to the approval of the F.A.A., which approval shall be evidenced by the signature of a duly authorized representative of the F.A.A. on the face of the airport layout plan. The Sponsor will not make or permit the making of any changes or alterations in the Airport or any of its facilities other than in conformity with the airport layout plan as so approved by the F.A.A., if such changes or alterations might adversely affect the safety, utility, or efficiency of the Airport."

53.

Prior to the injuries herein complained of, the defendant F.A.A. negligently allowed changes in the airport layout, contrary to the official layout plan, when they knew of the existence of said sanitary landfill or garbage dump, and when the defendant F.A.A. had the power and jurisdiction to have mitigated said Airport hazard.

54.

With further reference to said Agreement, as part of the consideration for the sums paid by the United States of America to DeKalb County, said DeKalb County, as Sponsor, agreed as follows:

> "These covenants shall remain in full force and effect throughout the useful life of the facilities developed

[23]

under this Project, . . ." (Project Application, Sponsor's Assurances, Paragraph 1).

and

"The Sponsor will operate the Airport as such for the use and benefit of the public. . . . The Sponsor may prohibit or limit any given type, kind or class of aeronautical use of the Airport if such action is necessary for the safe operation of the Airport or necessary to serve the civil aviation needs of the public." (Project Application, Sponsor's Assurances, Paragraph 2).

[24] and

"The Sponsor will operate and maintain in a safe and serviceable condition the Airport and all facilities thereon and connected therewith which are necessary to serve the aeronautical users of the Airport other than facilities owned or controlled by the United States, and will not permit any activity thereon which would interfere with its use for airport purposes." (Project Application, Sponsor's Assurances, Paragraph 6).

and

"In addition, the Sponsor will not erect or permit the erection of any permanent structure or facility which would interfere materially with the use, operation, or future development of the Airport, in any portion of a runway approach area in which the Sponsor has acquired, or may hereafter acquire, property interests permitting it to so control the use made of the surface of the land." (Project Application, Sponsor's Assurances, Paragraph 7).

and

". . . The Sponsor will not make or permit the making of any changes or alterations in the Airport or any of its facilities other than in conformity with the

[25]

airport layout plan as so approved by the F.A.A., if such changes or alterations might adversely affect the safety, utility, or efficiency of the Airport." (Project Application, Sponsor's Assurances, Paragraph 12).

and

"Insofar as is within its power and to the extent reasonable, the Sponsor will take action to restrict the use of land adjacent to or in the immediate vicinity of the Airport to activities and purposes compatible with normal airport operations including landing and take-off of aircraft." (Project Application, Sponsor's Assurances, Paragraph 13).

55.

The County defendants violated the provisions of said contract by willfully permitting the existence of an open garbage dump and bird hazard on the Airport site and adjacent to Runway 20L. Said contract having been made for the benefit of the public, plaintiff was a third party beneficiary of said contract and any other contracts and agreements similarly made between DeKalb County and the United States of America. The County defendants are liable for breach of said contract and any other similar contracts and are liable for the damages sustained by plaintiff resulting from the negligence and recklessness of the County defendants growing out of the breach of said contract, as related to aforesaid Airport.

[25] 56.

By reason of the existence of said open garbage dump prior to and on February 26, 1973, the operation of the Airport by the County defendants and defendant F.A.A. constituted a public and private nuisance and a hazard to public safety.

57.

The maintenance of said open garbage dump at said DeKalb-Peachtree Airport constituted an airport hazard as defined in 49 U.S.C. §1101, 49 U.S.C. §1711, and was a violation of 49 U.S.C. §1110 (3) and 49 U.S.C. §1718 (3).

58.

The United States of America, by and through its agents and employees, was also guilty of negligence proximately causing and contributing to the damages of plaintiff in the following particulars:

(a) In failing to require DeKalb County to remove and mitigate the Airport bird hazard by reason of the dumping of garbage on DeKalb-Peachtree Airport, the same being negligence per se and negligence as a matter of fact.

(b) In allowing jet propelled aircraft to operate in and out of DeKalb-Peachtree Airport when birds were a known hazard by reason of existence of the open garbage dump;

(c) In clearing the Learjet airplane for takeoff on February 26, 1973, in spite of the known or should have been known existence of numerous birds which were located in the vicinity of runway 20L at DeKalb-Peachtree Airport;

(d) In failing to give reasonable and adequate notice to pilots and the flight crew of the Learjet of the danger of birds to aircraft at the DeKalb-Peachtree Airport;

(e) In allowing DeKalb County to accomplish a change in the Airport layout plan of DeKalb-Peachtree Airport by establishing and maintaining an open garbage dump thereon, the same being in violation of the

airport layout plan which had been previously approved by the United States of America.

[26]

(f) In failing (through the Federal Aviation Administration and/or the Secretary of Transportation) to develop adequate safety standards for the manufacturers of Learjet aircraft and their engines governing the design and performance of aircraft engines as required in the interest of safety, which failure was a proximate cause of the crash and the injuries which are the subject of this claim.

(g) In failing (through the Federal Aviation Administration and/or the Secretary of Transportation) to take steps to decrease the number of birds which were attracted to the aforesaid garbage dump prior to the crash in question, which failure was a proximate cause of the crash and injuries which are the subject of this claim.

59.

The County defendants and their agents, servants and employees, were guilty of breach of contract and negligence arising out of breach of contract with the United States of America, all of which proximately caused and contributed to the damages of plaintiff, as follows:

(a) In permitting changes in the DeKalb-Peachtree Airport and its facilities, other than in conformity with the airport layout plan as officially approved by the United States of America, where such changes adversely affected the safety of the Airport;

(b) In operating the DeKalb-Peachtree Airport for the benefit of the public, and in connection therewith failing to prohibit the use of jet propelled aircraft where a portion of the Airport or land contiguous thereto was

utilized as an open garbage dump attracting large flocks of birds;

(c) In permitting activity at the Airport and facilities thereon which interfered with its use for airport purposes;

(d) In failing to restrict the use of land adjacent to Runway 20L of the Airport to purposes compatible with flight safety and normal operation of the Airport;

(e) In failing to act upon and abide by the specific warning of the United States of America with respect to the hazard created by the open garbage dump and the requests made [27] to remove said dump;

(f) In dumping and depositing (or in permitting such dumping and depositing) untreated garbage, trash, refuse, offal, filth and other waste materials on DeKalb-Peachtree Airport property;

(g) In failing to warn or advise jet aircraft owners and pilots of the danger created by the flocks of birds located in and about the vicinity of the Airport;

(h) In recklessly and wantonly continuing to use Airport property for an open garbage dump after receiving notice of the bird hazard.

60.

The defendant F.A.A. was also guilty of negligence causing and contributing to plaintiff's damages, in that the Atlanta Flight Service Station personnel and the DeKalb-Peachtree Airport air traffic control tower personnel negligently cleared the Lear Jet for takeoff from Runway 20L, contrary to the provisions of the Terminal Air Traffic Control Manual referred to in Paragraph No. 34, above, and the Advisory Circular referred to in Paragraphs No. 31, 32 and 33, above, and the provisions of

the Federal Register referred to in Paragraphs Nos. 29 and 30, above.

61.

The defendant F.A.A., by direction of Congress, is responsible for certification of aircraft as airworthy and for issuing type and production certificates for aircraft, including the Learjet Model 24. The defendant F.A.A. was also guilty of negligence proximately causing and contributing to the damages of plaintiff, as follows:

(a) In issuing a type certificate, production certificate and airworthiness certificate for the Learjet Model 24, including the accident aircraft, without any restrictions as to use of the aircraft in areas of known bird hazards, when defendant F.A.A. knew or should have known that the aircraft was capable of ingesting birds and that bird ingestion on take-off would cause a power loss and a resulting dangerous hazard to the safety of the airplane, persons aboard the airplane, and persons in vicinity of the airport;

[28]

(b) In failing to place restrictions on the type certificate, production certificate and airworthiness certificate of the Learjet Model 24, forbidding operation of the aircraft in areas of known bird hazards;

(c) In failing to prohibit operation of Learjet Model 24 aircraft at DeKalb-Peachtree Airport, when defendant F.A.A. knew or should have known that a bird hazard existed at said airport; and

(d) In failing to devise a system or procedure whereby Learjet Model 24 aircraft would not be cleared for takeoff at DeKalb-Peachtree Airport when a bird hazard was known or should have been known by defendant F.A.A. to exist at said airport.

62.

(a) Georgia Code Section 11-402(2) defines an "airport hazard" as any structure which is hazardous to the use of an airport for the taking off and landing of airplanes.

(b) Georgia Code Section 11-403 declares that an airport hazard endangers the lives and property of users of the airport and is therefore not in the interest of the public health, public safety or general welfare.

(c) Georgia Code Section 11-9902 declares that the violation of any airport zoning regulations shall constitute a misdemeanor.

(d) Section 1(b) of the 1960 DeKalb County Airport Zoning Resolution concerning DeKalb-Peachtree Airport defines an "airport hazard" as any structure or *use of land* which is "hazardous to such landing or taking off of aircraft."

(e) Section 5 of the 1960 DeKalb County Airport Zoning Resolution declares that no use may be made of land within any airport approach surface zone, horizontal surface zone, conical surface zone or transitional surface zone at DeKalb-Peachtree Airport, in such manner as to endanger the landing, taking off or manuevering of aircraft.

[29]

(f) Section 8 of the 1960 DeKalb County Airport Zoning Resolution declares that no material change shall be made in the use of land at DeKalb-Peachtree Airport and no structure shall be erected, altered, planted or otherwise established in any airport approach surface zone, horizontal surface zone, or conical surface zone unless a permit therefor shall have been applied for and granted.

Said Section 8 also declares that no permit shall be granted that would allow the establishment or creation of an airport hazard or permit a non-conforming use or structure to become a greater hazard to air navigation.

(g) Section 14 of said 1960 DeKalb County Airport Zoning Resolution also declares that every violation of said Resolution shall be punishable by fine or imprisonment, or both.

(h) The open garbage dump in question in this case is an airport hazard, as defined by Georgia Code Section 11-402(2) and Section 1(b) of the aforesaid Zoning Resolution. No permit was ever applied for or granted with respect to the establishment and operation of said open garbage dump. The maintenance of said open garbage dump is forbidden by Georgia Code Section 11-403, and by Sections 5 and 8 of said Zoning Resolution. The actions of the County defendants in establishing and operating said open garbage dump violated the aforesaid laws of Georgia and the aforesaid Zoning Resolution, and constitute negligence per se proximately causing and contributing to plaintiff's damages.

63.

The County defendants were also guilty of negligence per se proximately causing and contributing to plaintiff's damages, in that the County defendants enhanced and increased the bird-attracting nature of said open garbage dump by failing to place a compacted layer of at least six inches of clean earth over all exposed solid waste at the end of each day's operation, and by failing to spread solid waste in uniform layers not over two feet thick, and by failing to compact [30] solid waste prior to covering with

earth, and by otherwise operating and maintaining said open garbage dump in violation of the Georgia Solid Waste Management Act (Georgia Code Sections 43-1601, *et. seq.*) and the Rules and regulations of the Georgia Department of Natural Resources, Environmental Protection Division, concerning Solid Waste Management (Rules and Regulations of the State of Georgia, Sections 391-1-1-.1 *et seq.*).

64.

At all times relevant it was the duty of the County defendants to operate and manage DeKalb-Peachtree Airport in a safe condition. The County defendants were guilty of negligent acts and failures to act and derelictions of duties in their individual, personal capacities and in their official capacities, proximately causing and contributing to plaintiff's damages, in that the County defendants at all times relevant had actual, personal knowledge of the bird hazard and unsafe condition that existed at the Airport, and in that the County defendants had ample opportunity either to remove the bird hazard and unsafe condition or to prohibit the operation of jet aircraft at the Airport, and in that the County defendants failed to heed the warnings of defendant F.A.A. and others concerning such bird hazard and unsafe condition, and in that the County defendants willfully, wantonly, recklessly and negligently failed either to alleviate the bird hazard and unsafe condition, or to prohibit operation of jet aircraft at the Airport, or to warn the flight crews of jet aircraft of the bird hazard and unsafe condition, or to devise a system, plan or procedure for the warning of jet flight crews of the bird hazard or unsafe condition.

65.

The willful, wanton nature of the negligence and dereliction of duties of the County defendants and the seriousness of the negligence and carelessness of defendant F.A.A. are exemplified by the fact that prior to the injuries in question, the County defendants and defendant F.A.A. [31] had received notice of several airplane bird-strike or near bird-strike incidents within the airport boundaries, but despite this knowledge of prior incidents the County defendants and defendant F.A.A. failed to take any action at all to prevent a recurrence of such incidents.

66.

(a) DeKalb-Peachtree Airport is not owned, operated, managed and maintained by the County defendants as a governmental function or enterprise, but, instead, is owned, operated, and maintained and managed by the County defendants as a proprietary or ministerial function or enterprise. In this connection, plaintiff shows that the County defendants lease substantial portions of the Airport to private companies engaged in commercial operations for profit; that some of such leases are for fixed rental amounts and the remaining leases are for fixed rental amounts plus a percentage of the revenues or income derived by the tenants from their commercial operations; that the revenues thus obtained by the County defendants are not insignificant, but are substantial, and that the Airport is owned, operated, managed and maintained by the County defendants primarily as a source of revenue for the County defendants. In effect, with respect to the ownership, operation, management and maintenance of the Airport, the County defendants act as a private landlord and not as a governmental entity.

(b) Prior to the date of the crash in question, DeKalb County purchased a policy of liability insurance from the defendant American Home Assurance Company providing bodily injury liability insurance and property damage liability insurance to the County defendants with respect to the ownership, operation, management and maintenance of DeKalb-Peachtree Airport by the County defendants. Said policy of liability insurance provides coverage to the County defendants with respect to the claims of plaintiff herein. Said policy of insurance also contains a "Waiver of Governmental Immunity" rider which provides as follows:

> "It is agreed that the Company waives any right to deny liability under the policy or to refuse payment within the limits thereof by reason of [32] the nonliability of the insured political subdivision for the wrongful or negligent acts of its agents and employees and its immunity from suit as an agency of the State performing governmental functions."

Said policy was in full force and effect at the time of injuries complained of.

(c) The County defendants are not entitled to the benefit or protection of the doctrine of sovereign immunity with respect to the claims of plaintiff herein.

67.

By virtue of the operation of DeKalb-Peachtree Airport by the County defendants under the Uniform Airports Act (Georgia Code Sections 11-201, *et seq.*) and under the Federal Airport and Airway Development Act (49 U.S.C. §§1711, *et seq.*) and its predecessor, the Federal Airport Act (49 U.S.C. §§1101, *et seq.*) and by virtue of the Grant

Agreements and payments of Federal funds referred to earlier in this lawsuit, and by virtue of the application of the provisions of the Georgia Solid Waste Management Act and the Rules and Regulations of the Georgia Department of Natural Resources, Environmental Protection Division (Solid Waste Management) to the facts of this case, and by virtue of the application of the 1960 DeKalb County Airport Zoning Resolution to the facts of this case, an express or implied statutory waiver of the doctrine of sovereign immunity exists with respect to the claims of plaintiff against the County defendants. In the alternative, as a result of the acts and failures to act of the County defendants as alleged herein, and as a result of the acceptance and retention of benefits by the County defendants under the various statutes, rules and regulations and Grant Agreements referred to herein, the County defendants either expressly or impliedly have waived any defense based upon the doctrine of sovereign immunity, with respect to the claims of plaintiff herein.

68.

As a result of the aforesaid negligence, acts and omissions by the defendants, the plaintiff was injured by:

(a) Burns over 55% of his body surface area;

[33]

(b) Associated pulmonary burns covering his face, trunk, both arms and hands and both legs and feet;

(c) Permanent disfigurement and scarring of his face, hands, arms, legs and feet;

(d) Loss of ability to move individual joints of his hands and wrists;

(e) Permanent restriction in the motion of his joints and muscles of his limbs;

(f) Damage to his skeletal system which caused bone blocks and loss of ability to move his arms.

(g) The physical, mental, and emotional trauma of being critically burned, hospitalized over a long period of time with excrutiating pain, forced to undergo numerous agonizing surgical procedures and operations necessary for skin grafts and debridement of his wounds, undergoing intense physical therapy and enduring surgery to repair damage to his skeletal system.

69.

In the future, plaintiff will be forced to undergo further surgical procedures, including skeletal surgery, further physical therapy to rehabilitate many areas of motor weakness, possible further skin grafts, and plastic surgery for the extreme residual scars which cover his body.

70.

For the rest of his natural life, medical treatment and attention for his injuries will be necessary and the plaintiff will endure physical, mental and emotional pain and suffering caused by his injuries.

WHEREFORE, plaintiff respectfully prays and demands that process issue as provided by law, requiring defendants to appear and answer this Complaint; that a jury trial be demanded; that plaintiff have judgment against all defendants jointly and severally in the sum of $3,045,187.00 plus all costs of Court; and that plaintiff have such other and further relief as the Court deems just and proper.

[34] **COUNT TWO**

As his second and alternative claim for relief, plaintiff respectfully shows to the Court the following:

1.

Plaintiff incorporates, adopts, repeats and re-alleges herein by reference the allegations of paragraphs number 1 through 70 of Count One of this Complaint.

2.

By operating the open garbage dump in the condition and manner described in this complaint, and by managing, maintaining and operating DeKalb-Peachtree Airport in the manner and condition described in this Complaint, the County defendants are guilty of maintaining a public and private nuisance injurious to public and private health, person and property.

3.

The maintenance of said nuisance by the County defendants was a proximate and contributing cause of the airplane crash in question, and resulted in damage to plaintiff in the sum of $3,045,187.00.

WHEREFORE, plaintiff respectfully prays that process issue as provided by law, requiring the County defendants to appear and answer this complaint; that a jury trial be demanded; that plaintiff have judgment against all of the County defendants including American Home Assurance Company jointly and severally in the sum of $3,045,187.00 plus all costs of Court; and that plaintiff have such other and further relief as the Court deems proper and just.

COUNT THREE

As his third and alternative claim for relief, plaintiff respectfully shows to the Court the following:

1.

Plaintiff incorporates, adopts, repeats and re-alleges herein by reference the allegations of paragraphs numbered 1 through 70 of Count One of this Complaint.

[35] 2.

The County defendants have willfully and wantonly breached, violated and disregarded the provisions, assurances and contractual commitments contained in the aforesaid Grant Agreements and related contracts and documents, all of which Grant Agreements, related contracts and documents were designed and intended to inure to the benefit of plaintiff and other members of the public, as third-party beneficiaries.

3.

The airplane crash in question and plaintiff's damages were proximately caused by the said breaches of contract by the County defendants, and the County defendants are therefore liable to plaintiff for breach of contract in the sum of $3,045,187.00.

WHEREFORE, plaintiff respectfully prays that process issue as provided by law, requiring the County defendants including American Home Assurance Company to appear and answer this complaint; that a jury trial be demanded; that plaintiff have judgment against all of the County defendants jointly and severally in the sum of

$3,045,187.00 plus all costs of Court; and that plaintiff have such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ ROBERT W. PATRICK
ROBERT W. PATRICK

/s/ ROBERT M. TRAVIS
ROBERT M. TRAVIS

POWELL, GOLDSTEIN, FRAZER
& MURPHY
1100 C & S National Bank Building
Atlanta, Georgia 30303

/s/ HERBERT S. FALK, JR.
HERBERT S. FALK, JR.
Attorneys for the Plaintiff

FALK, CARRUTHERS & ROTH
P. O. Box 540
Greensboro, North Carolina 27402

[48]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

[48] [Filed in Clerk's Office Apr. 15, 1974,
Ben H. Carter, Clerk; By: P.J.E., Deputy Clerk.]

WILLIAM MICHAEL FIELDS,
Plaintiff,

vs.

UNITED STATES OF AMERICA;
DEKALB COUNTY, GEORGIA;
A. C. GUHL, in his capacity as Chairman of the Board of Commissioners of Roads and Revenues of DeKalb County;
WILLIAM A. WILLIAMS, in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
T. M. CALLAWAY, JR., in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
HOKE CLAYTON SMITH, in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
ROBERT J. MORRIS, in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
HORIS A. WARD, in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
W. M. COOLIDGE, in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
H. F. MANGET, individually and as Airport Manager of the DeKalb-Peachtree Airport, and
AMERICAN HOME ASSURANCE COMPANY,
Defendants.

CIVIL ACTION FILE NO. C-74-291-A

[49]

MOTION TO STRIKE

Now come DEKALB COUNTY, GEORGIA, A. C. GUHL, WILLIAM A. WILLIAMS, T. M. CALLAWAY, JR., HOKE CLAYTON SMITH, [49] ROBERT J. MORRIS, HORIS A. WARD, and W. M. COOLIDGE, some of the Defendants in the above-styled action, and move the Court, pursuant to Rule 12, Federal Rules of Civil Procedure, to strike certain allegations from the Complaint, showing the Court as follows:

1.

Defendants move to strike Paragraphs 56 of Count One and 2 of Count Two from the Complaint on the grounds that said Paragraphs fail to state a claim upon which relief can be granted in that in Georgia, an action will not lie against a County for the alleged creation and/or maintenance of nuisance.

2.

Defendants move to strike Paragraphs 2 (k) and 66 (b) from the Complaint on the ground that said Paragraphs fail to state a claim upon which relief can be granted in that in Georgia, no direct action lies against the insurer of one of the Defendants and evidence of such is inadmissible and prejudicial.

3.

Defendants move to strike Paragraphs 19, 20, 43, 59, 64, 65, the remaining allegations of 66 and 67 from the Plaintiff's Complaint on the grounds that said Paragraphs fail to state a claim upon which relief can be granted in that a County in Georgia is not subject to suit based upon

negligence owing to its constitutional governmental immunity which has not been waived, either expressly or impliedly.

4.

Defendants move to strike Paragraphs 54, 55 and 59 of Count One and 2 of Count Three from the Complaint on the ground that said Paragraphs fail to state a claim upon which relief can be granted in the following particulars:

[50]

(a) Plaintiff cannot be a third-party beneficiary to the contracts claimed in said Paragraphs to have been breached by these Defendants since there is no intent in such contracts to confer upon third persons the type of benefits claimed by plaintiff in this action;

(b) Plaintiff cannot recover as a third-party beneficiary for the breach of said contracts on the basis of their Complaint, the allegations of which considered as a whole, clearly fail to allege any breach of contracts;

(c) Plaintiff cannot recover the damages sought as a third-party beneficiary to the contracts because a third-party beneficiary's rights under any contract are no greater than the rights of the parties themselves, and the contracts which Plaintiff alleged to have been breached in said Paragraphs confer no right on any party to recover the damages sought in the Complaint.

5.

Defendants move to strike Paragraphs 62 and 63 from Plaintiff's Complaint on the grounds that said Paragraphs fail to state a claim upon which relief can be granted in that the statutes, ordinances, and regulations recited in said Paragraphs do not create in Plaintiff a cause of action against these Defendants.

WHEREFORE, the Defendants, DEKALB COUNTY, GEORGIA, A. C. GUHL, WILLIAM A. WILLIAMS, T. M. CALLAWAY, JR., HOKE CLAYTON SMITH, ROBERT J. MORRIS, HORIS A. WARD, and W. M. COOLIDGE, pray that their Motion be inquired into and sustained.

Respectfully submitted,

HARVEY, WILLARD & ELLIOTT

By: /s/ WENDELL K. WILLARD
WENDELL K. WILLARD

125 Trinity Place
Decatur, Georgia

[51]

LONG, WEINBERG, ANSLEY & WHEELER

By: /s/ MEADE BURNS
MEADE BURNS

By: /s/ F. CLAY BUSH
F. CLAY BUSH

3000 The Equitable Building
Atlanta, Georgia 30303
525-5903

[53] (Caption omitted in printing)

[53] Filed: Apr. 15, 1974

MOTION TO DISMISS

Now come DEKALB COUNTY, GEORGIA, A. C. GUHL, T. M. CALLAWAY, JR., HOKE CLAYTON SMITH, ROBERT J. MORRIS, [54] HORIS A. WARD, and W. M. COOLIDGE, some of the Defendants in the above-styled action, and move the Court, pursuant to Rule 12, Federal Rules of Civil Procedure, for the dismissal of the Complaint, showing the Court as follows:

1.

The Complaint fails to state a claim or cause of action against DeKalb County, Georgia, upon which relief can be granted.

2.

None of the claims asserted against Defendant, DeKalb County, Georgia, can be granted owing to its constitutional governmental immunity which has not been waived, either expressly or impliedly.

3.

More particularly, DeKalb County, Georgia, shows the Court that the Complaint fails to state a claim upon which relief can be granted in the following respects:

(a) In Georgia, no right of action will lie against a County for the creation, and/or maintenance of a nuisance;

(b) Plaintiff cannot recover against DeKalb County, Georgia, on a theory of negligence as a matter of law owing to said Defendant's constitutional governmental immunity from suit which has not been waived, either expressly or impliedly;

(c) The statutes, ordinances, and regulations recited in the Complaint do not create in Plaintiff a cause of action against this Defendant;

(d) DeKalb County, Georgia maintains the DeKalb-Peachtree Airport as a governmental function, and, as such, is constitutionally immune from suit by this Plaintiff.

(e) There is no right of action in Plaintiff, as a third-party beneficiary on any alleged breach of any Federal Grant Agreements entered into by and between DeKalb County, Georgia, and the Federal [55] Aviation Administration because there is no intent made manifest within such Federal Grant Agreements to confer upon third persons the type of benefit claimed by Plaintiff in this action;

(f) Even if the Federal Grant Agreements entered into by and between DeKalb County, Georgia, and the Federal Aviation Administration were intended to benefit the public in the manner claimed by Plaintiff, the Complaint shows on its face that these Federal Grant Agreements had not been breached by DeKalb County, Georgia, in operating a sanitary landfill on property contiguous to DeKalb Peachtree Airport in that the Federal Aviation Administration is alleged to have had knowledge of and thus to have consented to and consciously allowed the maintenance of said landfill;

(g) Even if Plaintiff otherwise had the right to sue as a third-party beneficiary for an alleged breach of the Federal Grant Agreements entered into by and between DeKalb County, Georgia, and the Federal Aviation Administration, Plaintiff cannot recover the damages sought stemming from the alleged breach because a third-party beneficiary's rights under any contract are no greater than the rights of the parties themselves, and the Federal Grant Agreements which Plaintiff alleges to have been breached confers no right

on any party to recover the damages sought in the Complaint.

WHEREFORE, Defendant, DEKALB COUNTY, GEORGIA, A. C. GUHL, T. M. CALLAWAY, JR., HOKE CLAYTON SMITH, ROBERT J. MORRIS, HORIS A. WARD and W. M. COOLIDGE, pray that their Motion be inquired into and sustained and that the Complaint be dismissed as to them.

(Signature omitted in printing)

 (Caption omitted in printing)

ANSWER OF DEKALB COUNTY, GEORGIA, AND THE CHAIRMAN AND MEMBERS OF THE BOARD OF COMMISSIONERS OF ROADS AND REVENUES OF DEKALB COUNTY

Come now DeKalb County, Georgia, and the Members of the Board of Commissioners of Roads and Revenues of DeKalb County, Georgia, including the Chairman thereof, and respond to the Complaint of Plaintiff as follows:

COUNT ONE

1.

These Defendants are without knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraphs 1, 6, 7, 8, 9, 12, 15, 17, 31, 32, 33, 35, 37, 49, 61, 69 and 70 of Count One of the Complaint of Plaintiff.

2.

These Defendants respond to Paragraph 2 of Count One as follows:

(a) The allegations of subparagraph (a) of Paragraph 2 are admitted.

(b) DeKalb County, Georgia admits it is a political subdivision of the State of Georgia and is located within the Northern District of Georgia. Responding further, these Defendants deny the remainder of the allegations of subparagraph (b) of Paragraph 2 of the Complaint.

(c) The Chairman and Members of the Board of Commissioners of Roads and Revenues of DeKalb

[105]

County admit that each is a citizen of Georgia and resides within the Northern District of Georgia, but each denies he is subject to the jurisdiction of this Court in this action.

[106]

(d) The American Home Assurance Company denies that it is subject to the jurisdiction of this Court in this action.

3.

These Defendants admit the allegations contained in Paragraphs 4, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 34, 39, 47 and 51 of Count One of the Complaint.

4.

These Defendants admit the allegations contained in Paragraph 14 of Count One of the Complaint.

5.

The allegations contained in Paragraphs 10, 11, 13, 19, 20, 36, 41, 44, 55, 56, 57, 63, 64, 65, and 67 of Count One of the Complaint are denied by these Defendants.

6.

Responding to Paragraph 3 of Count One of the Complaint, these Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in subparagraph (a). Responding further, these Defendants deny the allegations of subparagraphs (b) and (c) of Paragraph 3.

7.

Responding to paragraph 5 of Count One of the Complaint, these Defendants admit on February 26, 1973 at approximately 10:12 a.m., E.S.T., a Learjet Model 24 air-

[107]

craft, N-454RN, was in the process of taking off from Runway 20L at DeKalb-Peachtree Airport. Responding further, these Defendants deny the remainder of the allegations contained in Paragraph 5 of Count One of the Complaint.

[107] 8.

Responding to Paragraph 16 of Count One of the Complaint, these Defendants admit the Atlanta Flight Service Station is a facility operated, supervised and manned by Defendant, FAA, for the purpose, among other things, of recording and filing of flight plans and furnishing pilots with relevant data and information concerning weather, flight conditions and various other matters concerning safety of flight. Further responding, these Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of Paragraph 16 of Count One of the Complaint.

9.

Responding to Paragraph 18 of Count One of the Complaint, these Defendants admit some dead starlings or other birds were found at or near the departure end of Runway 20L. Responding further, these Defendants are without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations contained in Paragraph 18 of Count One of the Complaint.

10.

Responding to Paragraph 38 of Count One of the Complaint, these Defendants admit DeKalb-Peachtree Airport is located within the boundaries of DeKalb County on land owned by the County, and said airport is owned and maintained by the County. Responding further, the

County operates and manages certain aspects of said airport, but the operation and control of aircraft is under the jurisdiction of the FAA. These Defendants admit said airport has paved runways and airport hangars, servicing and parking facilities, a control tower with radio facilities, and [108] instrument landing system control center, and access to other radio and navigational aids. Responding further, these Defendants aver the airport is operated under the jurisdiction of the Federal Aviation Administration and aver that the airport is operated for the use and benefit of the public. Further responding, all other allegations contained in Paragraph 38 of Count One of the Complaint are denied.

11.

Responding to Paragraph 40 of Count One of the Complaint, these Defendants admit only that beginning in 1962, a portion of the land contiguous to the land utilized as an airport facility was used by DeKalb County as a landfill. Further responding, the landfill was closed in 1964 and remained closed until March, 1966. Responding further, these Defendants admit that since March, 1966, the land contiguous to that land utilized for airport facilities was utilized again for landfill purposes. Further responding, all other allegations contained in Paragraph 40 of Count One are denied.

12.

The allegations contained in Paragraphs 42 and 43 ot Count One of the Complaint are denied by these Defendants.

13.

Responding to Paragraph 45 of Count One of the Com-

plaint, these Defendants admit that the United States of America by and through the Federal Aviation Administration had the responsibility for the administration of the Federal Airport Development Act of 1970 and its predecessor, the Federal Airport Act of 1946. Responding further, these [109] Defendants aver that the various federal grant agreements speak for themselves in respect of the provisions of such federal grant agreements. Responding further, the remainder of the allegations contained in Paragraph 45 of Count One of the Complaint are denied.

14.

Responding to Paragraph 46 of Count One of the Complaint, these Defendants aver the various federal grant agreements speak for themselves in respect of the provisions of such federal grant agreements. Responding further, these Defendants admit the United States of America has certain responsibilities over the safety of DeKalb-Peachtree Airport and admit the United States of America received certain described assurances from DeKalb County, Georgia as set out in the various grant agreements. The remainder of the allegations contained in Paragraph 46 of Count One of the Complaint are denied.

15.

Responding to Paragraph 48 of Count One of the Complaint, these Defendants admit there is an airport layout plan developed by DeKalb County and approved by the Federal Aviation Administration which illustrates the development and proposed development of the airport facilities and the use of the land included within the airport boundaries. The remainder of the allegations contained in Paragraph 48 of Count One of the Complaint are denied and these Defendants aver that such airport layout plan includes "industrial use".

16.

Responding to Paragraph 50 of Count One, these Defendants admit from March 9, 1970 through February 14, 1972, [110] the Federal Aviation Administration and DeKalb County, Georgia, communicated both by letter and by conference in respect to land usage of the land utilized as an airport facility and that land contiguous thereto in respect of the sanitary landfill. Responding further, the remainder of the allegations contained in Paragraph 50 of Count One are denied.

17.

Responding to Paragraph 52 of Count One of the Complaint, these Defendants aver that the agreements entered into by the United States of America and DeKalb County will speak for themselves in respect of the contents thereof. Responding further, these Defendants admit the language quoted in Paragraph 52 of Count One is contained in agreements between the United States of America and DeKalb County, Georgia.

18.

Responding to Paragraph 53 of Count One of the Complaint, these Defendants aver that the United States of America and the Federal Aviation Administration has authority to allow changes in the airport layout plan and admit that the United States of America and the Federal Aviation Administration had knowledge of the existence of the sanitary landfill contiguous to the land utilized as an airport facility.

19.

Responding to Paragraph 54 of Count One of the Complaint, these defendants admit the quoted language is

contained in various agreements entered into by and between the United States of America and DeKalb County, Georgia.

[111] 20.

No response is required of these Defendants to Paragraph 58 of Count One of the Complaint of Plaintiff as such allegations are directed to the United States of America.

21.

These Defendants deny the allegations contained in Paragraph 59 of Count One of the Complaint and deny each and every subparagraph of Paragraph 59.

22.

No response is required of these Defendants to Paragraph 60 of Count One of the Complaint, as such allegations are directed to the United States of America.

23.

These Defendants respond to Paragraph 62 of Count One of the Complaint as follows:

(a) Georgia Code Section 11-402 contains the following definition:

> "(2) 'Airport Hazard' means any overhead power line which interferes with radio communication between a publicly-owned aircraft approaching or leaving same, or any structure or tree which obstructs the aerial approaches of such an airport or is otherwise hazardous to its use for landing or taking off."

The above definition is contained in the "Airport Zoning Act."

[111]

(b) These Defendants admit the "Airport Zoning Act" contains language that an airport hazard endangers the lives and property of users of the airport and is therefore not in the interest of the public health, public safety or [112] general welfare. Responding further, Georgia Code Section 11-403 refers to "Airport Hazard" as defined in the "Airport Zoning Act."

(c) These Defendants admit subparagraph (c) and admit Georgia Code Section 11-9902 declares that the violation of an airport zoning regulation as set out in Chapter 11-4, of the Code of Georgia, shall constitute a misdemeanor.

(d) These Defendants aver the Airport Zoning Resolution defines "Airport Hazard" as follows:

> "*Section 2. Definitions.* (2) 'Airport Hazard' means any structure or tree or use of land which obstructs the air space required for the flight of aircraft in landing or taking off at the airport or is otherwise hazardous to such landing or taking off of aircraft."

(e) These Defendants deny the allegations of Subparagraph (e).

(f) These Defendants deny the allegations of Subparagraph (f).

(g) These Defendants deny the allegations contained in Subparagraph (g).

(h) These Defendants deny Subparagraph (h).

Further responding to Paragraph 62 of Count One of the Complaint, these Defendants aver that DeKalb County, Georgia is not required by law to zone land for use by the County when that land is owned by the County.

24.

These Defendants respond to Paragraph 66 of Count One of the Complaint as follows:

[113]

(a) The allegations contained in Subparagraph (a) of Paragraph 66 are denied.

[113]

(b) Responding to Subparagraph (b) of Paragraph 66, these Defendants aver that any policy of insurance purchased by DeKalb County is a matter that concerns only DeKalb County and the insurance company issuing the policy of insurance. Further responding, Defendants admit DeKalb County purchased a policy of liability insurance, the terms, conditions and limitations of which are set forth fully in said policy of insurance, and any "Waiver of Governmental Immunity" language contained in said policy of insurance does not in anywise prevent Defendants from raising the question of the immunity of the County to suit. Further responding, these Defendants admit that the policy of insurance contains the endorsement, or rider, alluded to in subparagraph (b) of Paragraph 66.

(c) The allegations contained in Subparagraph (c) of Paragraph 66 are denied by these Defendants.

25.

Responding to Paragraph 68 of Count One of the Complaint, these Defendants deny that they were negligent in any manner. Further responding to the subparagraphs under Paragraph 68, these Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained.

WHEREFORE, these Defendants demand trial by jury and pray they be hence discharged without liability.

COUNT TWO

1.

Plaintiff incorporated, adopted, repeated and realleged as Paragraph 1 of Count Two the allegations of Para-

[113]

graphs numbered 1 - 70 of Count One of the Complaint and these Defendants, likewise, incorporate, adopt, repeat and [114] reallege herein by reference their responses to the allegations of Paragraphs numbered 1 - 70 of Count One as their responses to Paragraph 1 of Count Two of the Complaint.

2.

These Defendants deny the allegations contained in Paragraphs 2 and 3 of Count Two of the Complaint.

WHEREFORE, these Defendants demand trial by jury and pray they be hence discharged without liability.

COUNT THREE

1.

Plaintiff incorporated, adopted, repeated and realleged by reference as Paragraph 1 of Count Three of the Complaint the allegations of Paragraphs numbered 1 - 70 of Count One of the Complaint and these Defendants, likewise, incorporate, adopt, repeat and reallege herein by reference their responses to Paragraphs numbered 1 - 70 of Count One as their response to Paragraph 1 of Count Three of the Complaint.

2.

These Defendants deny the allegations contained in Paragraphs 2 and 3 of Count Three of the Complaint.

WHEREFORE, Defendants demand trial by jury and pray they be hence discharged without liability.

(Signature omitted in printing)

PART E

REFERENCE TO ORDERS AND JUDGMENTS IN ALL CASES

PART E

REFERENCE TO ORDERS AND JUDGMENTS IN ALL CASES

* * * * *

MIREE, NO. 76-607

* * * * *

The initial panel decision and the subsequent en banc decision by the Fifth Circuit Court of Appeals are reported at 526 F.2d 679 and 538 F.2d 643, and were reprinted by the Miree petitioners at pages A-1 through A-31 of the Appendix to their petition for writ of certiorari. For this reason, such decisions have not been reproduced in this Joint Appendix.

The order entered by the District Court dismissing the Miree complaint and the order of the District Court denying the motion for reconsideration are not reported, but both of such District Court orders, together with the final judgment entered by the District Court, were reprinted by the Miree petitioners at pages A-32 through A-47 of the Appendix to their petition for writ of certiorari. For this reason, such judgment and orders are not reproduced in this Joint Appendix.

* * * * *

PHILLIPS, NO. 76-659

* * * * *

The initial panel decision and the subsequent en banc decision by the Fifth Circuit Court of Appeals are reported at 526 F.2d 679 and 538 F.2d 643, and were reprinted by petitioner Phillips at pages 1a through 17a and 1b through 21b of the Appendix to her petition for writ of certiorari. Such decisions are not reproduced in this Joint Appendix.

[114]

The order entered by the District Court dismissing the Phillips complaint and the District Court order denying the motion for reconsideration are not reported, but such orders may be found at pages 1c through 5c and 1d through 11d of the Appendix to the Phillips petition for writ of certiorari. For this reason, such orders are not reproduced in this Joint Appendix.

The District Court judgment dismissing the Phillips complaint is neither reported nor reprinted in the Phillips petition for writ of certiorari, but such judgment is reproduced below as follows:

[536]

IN THE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JUDITH ANITA PHILLIPS, widow of David Emanuel Phillips, Deceased,

Plaintiff,

v.

UNITED STATES OF AMERICA, DEKALB COUNTY, GEORGIA,

Defendants,

UNITED STATES OF AMERICA,

Defendant and third-party plaintiff,

v.

MACHINERY BUYERS CORP. and SOUTHEAST MACHINERY, INC.

CIVIL ACTION NO. 19412

[536]

FINAL JUDGMENT PURSUANT
TO RULE 54(b)

Filed: Sept. 2, 1974

An Order having been signed by Judge William C. O'Kelley on June 27, 1974 and filed in the Clerk's Office on June 27, 1974 granting the motion of Defendant DeKalb County to dismiss the complaint for failure of plaintiffs to state a claim, further the motion by Defendants Southeast Machinery and Machinery Buyers Corporation to set aside prior order dismissing DeKalb County filed on July 3, 1974, having been denied by Order of the Court dated filed on September 25, 1974, the Court having directed entry of final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, and thus having certified that there is no just reason for delay, and expressly directing entry of final judgment on said complaint the plaintiffs, it is

ADJUDGED that the action be dismissed as to the Defendant DEKALB COUNTY, that the plaintiffs, JUDITH ANITA PHILLIPS, widow of David Emanuel Phillips, deceased, take nothing and that the taxation of costs in the action shall await entry of final judgment as to all defendants.

(Signatures omitted in printing)

* * * * *

FIREMAN'S FUND, NO. 76-700

* * * * *

The initial panel decision and the en banc decision of the Fifth Circuit Court of Appeals are reported at 526

F.2d 679 and 538 F.2d 643, and were reprinted by petitioner Fireman's Fund at pages 1a through 34a of the Appendix to its petition for writ of certiorari. Thus, such decisions are not reproduced in this Joint Appendix.

The judgment of the Fifth Circuit Court of Appeals on rehearing en banc is reprinted at pages 55a through 56a of the Appendix to the Fireman's Fund petition for writ of certiorari, and such judgment is not reproduced in this Joint Appendix.

The dismissal order, and order denying motion for reconsideration, and final judgment, entered by the District Court, are not reported and are not reproduced in this Joint Appendix, but such judgment and orders may be found at pages 35a through 54a of the Appendix to the Fireman's Fund petition for writ of certiorari.

* * * * *

FIELDS, NO. 76-722

* * * * *

The initial panel decision and the en banc decision of the Fifth Circuit Court of Appeals are reported at 526 F.2d 679 and 538 F.2d 643, and are reprinted at pages 1a through 17a and 1b through 21b of the Appendix to the Fields petition for writ of certiorari. Such decisions are not reproduced in this Joint Appendix.

The order of the District Court dismissing the Fields complaint and the District Court order denying the motion for reconsideration are not reported or reproduced in this Joint Appendix, but such orders are reprinted at pages 1c through 5c and 1d through 11d of the Appendix to the Fields petition for writ of certiorari.

The final judgment entered by the District Court is neither reported nor reprinted in the Fields petition for writ of certiorari, but such judgment is reproduced below as follows:

[192]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WILLIAM MICHAEL FIELDS,

Plaintiff,

VS.

UNITED STATES OF AMERICA;
DEKALB COUNTY, GEORGIA:
A. C. GUHL, in his capacity as Chairman of the Board of Commissioners of Roads and Revenues of DeKalb County;
WILLIAM A. WILLIAMS, in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
T. M. CALLAWAY, JR., in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
HOKE CLAYTON SMITH, in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
ROBERT J. MORRIS, in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
HORIS A. WARD, in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;
W. M. COOLIDGE, in his capacity as Member of the Board of Commissioners of Roads and Revenues of DeKalb County;

CIVIL ACTION NO. C74-291-A

(Continued on Page 314)

H. F. MANGET, JR., individually and as Airport Manager of the DeKalb-Peachtree Airport; and AMERICAN HOME ASSURANCE COMPANY,
Defendants.

CIVIL ACTION NO. C74-291-A

FINAL JUDGMENT PURSUANT
TO RULE 54(b)

An Order having been signed by Judge William C. O'Kelley on June 27, 1974 and filed in the Clerk's Office on June 27, 1974 granting the motion of Defendant Dekalb County to dismiss the complaint for failure of plaintiff to state a claim, further, the motion by Movants, Southeast Machinery and Machinery Buyers Corporation to set aside prior order of the Court dismissing Defendants Dekalb County and the members and Chairman of the Board of Commissioners of Roads and Revenues of Dekalb County filed on July 3, 1974, having been denied by Order of the Court, dated filed September 25, 1974, the Court having directed entry of final judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, and thus having certified that there is no just reason for delay, and expressly directing entry of final judgment on said complaint against the plaintiff, it is

ADJUDGED that the action be dismissed as to Defendants, DEKALB COUNTY, A. C. GUHL, WILLIAM A. WILLIAMS, THOMAS CALLAWAY, JR., HOKE CLAYTON SMITH, R. F. MORRIS, WILLIAM COOLIDGE, HORIS A. WARD, H. F. MANGET, JR., that the plaintiff, WILLIAM MICHAEL FIELDS take

nothing and that the taxation of costs in the action shall await entry of final judgment as to all defendants.

This 25th day of September, 1974.

(Signature omitted in printing)

AMENDMENT OF FINAL JUDGMENT

In order to correct a clerical error, and pursuant to Rule 60(a), Fed. R. Civ. P., the final judgment dated and filed on September 25, 1974 in this case is hereby amended by deleting H. F. Manget from the judgment of dismissal, so that as the case now stands H. F. Manget remains as a party defendant.

It is so ordered and adjudged.

This 2nd day of October, 1974.

(Signature omitted in printing)